

Oral Testimony on EPA CBA Rule Repeal

My name is Amy Sinden. I am a professor of law at Temple University and a member scholar at the Center for Progressive Reform. I want to commend the EPA for wisely rescinding this problematic rule.

This Trump administration rule was, at bottom, an attempt to cut the heart out of the Clean Air Act. That's something the right wing and its industry allies has wanted desperately to do for decades, but frontal assaults on the statute inevitably fail because the Clean Air Act is so enormously popular with the public. This rule aimed at the same result through [stealth](#).

Part of that stealth is the superficial reasonableness of the cost-benefit calculus the Trump rule would have imposed on Clean Air Act rulemakings. After all, why *shouldn't* EPA measure the costs and benefits of a series of regulatory alternatives, calculate their net benefits, and then pick the benefit-maximizing alternative?

But the reality is that the Emperor has no clothes—or, more to the point, EPA has no data.

The problem is, of the literally hundreds of pollutants EPA regulates under the Clean Air Act, there's really only one that EPA has decent data on, and that's particulate matter. (Even there, EPA's quantified estimates leave out cancer and other long-term effects.). More than 90 percent of all benefits EPA quantifies in its cost-benefit analyses are attributable to this one pollutant. For a handful of others (the "criteria air pollutants"), EPA has been able to quantify a small subset of the impacts. But for the 189 "hazardous air pollutants" that Congress listed by name in the 1990 Clean Air Act and specifically charged EPA with regulating, the agency has, with only one minor exception, been entirely unable to quantify any benefits. That means, even when EPA is able to produce big numbers on the benefits of its Clean Air Act regulations, there's always a lot that those numbers leave out.

Indeed, an [empirical study](#) I published in 2019 showed that in 80% of the major rules issued by EPA between 2002 and 2015, it was unable to monetize whole categories of benefits the agency itself described as "important," "significant," or "substantial."

When one takes a clear-eyed look at the enormity of the data gaps EPA confronts, it becomes apparent that the notion that the agency could choose the regulatory alternative that maximizes net benefits in order to achieve some mythical state of Kaldor-Hicks efficiency is nothing more than a charade. When significant benefits are missing from the monetized estimate, calculating a number that meaningfully represents a rule's *net benefits* is simply a logical impossibility, and any calculation that purports to do so is, as OIRA itself acknowledges, ["misleading"](#) at best.

Congress was fully aware of these data gaps when it passed the Clean Air Act. That's why it rejected a formal cost-benefit approach and chose not to tether the statute to the elusive and controversial Kaldor-Hicks efficiency standard. Instead, Congress's approach embraced the Precautionary Principle—the idea that we should err on the side of caution when it comes to spewing toxins into our environment that may leave irreversible impacts. Accordingly, the Act authorizes EPA to regulate *before* the precise degree of harm has been exhaustively proven, as soon as danger to public health and welfare “may reasonably be anticipated.” It provides context-specific tools for EPA to use in setting standards that make use of the information we have, rather than the information we wish we had. And it presumes that using the best available technologies to reduce pollution levels as much as we can without breaking to bank will be worthwhile.

The Trump administration's cost-benefit rule would have turned all that on its head.

I hope that rescinding this rule is just the first step, and that EPA takes seriously President Biden's call to “[improve and modernize](#)” regulatory review in order to “ensure that [it] serves as a tool to affirmatively promote . . . values . . . of environmental sustainability, racial justice, equity, human dignity and the interests of future generations.” That will involve [putting front and center again](#) the precautionary approach in the Clean Air Act and moving away from the hyper-formalistic brand of cost-benefit analysis that has come to dominate regulatory review.