Insight

EPA Proposes Benefit-Cost Analysis Rule

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EXECUTIVE SUMMARY

- The Environmental Protection Agency (EPA) proposed a rule that for the first time would establish its benefit-cost analysis (BCA) principles in regulatory code.
- The most significant element of the proposed rule is the separation of co-benefits from direct benefits for purposes of calculating the value of benefits to be used in regulatory decisions.
- By codifying its BCA process, the Trump Administration's EPA is aiming to give its BCA principles a life beyond this administration.

INTRODUCTION

The Environmental Protection Agency (EPA) recently released text of a proposed rule that would, for the first time, codify how the agency conducts benefit-cost analysis (BCA) on significant Clean Air Act (CAA) rules. While EPA has performed BCA on CAA rules for decades, the proposed rule aims to standardize how benefits and costs are accounted for and weighed in rulemaking decisions.

Codifying a standard practice for BCA helps ensure that certain BCA principles are applied to each significant CAA rule consistently. The proposed rule also seeks to address the use of co-benefits and double counting, which have been used to justify expensive regulations in the past.

ELEMENTS OF THE PROPOSED RULE

The proposed rule consists of three main elements. The first codifies that for all future significant CAA rules, EPA will prepare a BCA at both the proposed and final rule stage. The agency uses the definition of significant from Executive Order 12,866, which encompasses those rules that have expected annual economic impacts of at least $100 million or raise novel policy issues. It would also allow the EPA administrator to designate rules that might otherwise not be covered as significant. Using those actions of EPA's Office of Air and Radiation (the office that primarily implements the CAA) from the most recent Unified Agenda as context, this definition of significant would cover 33 of the 81 rules currently in the office's pipeline.

The second element outlines the key components and scientific data standards to be used in the development of cost estimates. It stipulates that these should be performed in accordance with sound scientific and economic principles and specifically cites the Office of Management and Budget's guidance on regulatory analyses (Circular A-4) and EPA's internal BCA guidance (Guidelines for Preparing Economic Analyses).

The third element pertains to benefits and contains the most significant provisions of the proposed rule. According to the text, BCAs should, to the extent supported by quality science and economics, quantify all benefits, monetize all benefits, and qualify those benefits that cannot be quantified. This element also prescribes

how the agency should develop its baseline estimates, with special attention paid to the interaction of any new rule with the effect of existing regulations.

The third element also addresses co-benefits, or incidental benefits not directly related to regulating a targeted pollutant. Co-benefits have been used in the past to justify expensive regulations that would not have been net-beneficial if only considering the impact of the rule on the targeted pollutant. The most notable of these rules was the Mercury and Air Toxics Standards (MATS), which boasted $90 billion in benefits, with less than $1 million of those coming from a reduction in mercury emissions. While the proposed rule calls for EPA to identify co-benefits, the value of those is to be removed from the direct benefits and should not drive a regulatory decision.

IMPLICATIONS OF THE PROPOSED RULE

Much of the attention of the proposed rule will be on EPA's decision to remove co-benefits from the benefit-cost equation and the baseline estimate. The MATS rule demonstrates why each is important in rulemaking. The MATS rule would not have been justified absent those co-benefits, nearly all of which came from reductions in particulate matter. Why would it be problematic to include those reductions? Because EPA has an entire regulatory scheme specifically addressing particulate matter. When the Obama-era EPA was developing the MATS rule it was also updating its particulate matter standards. Rather than consider how the two rules would interplay however, it used as its baseline – or starting point – that each would act absent the other. The result is that EPA was able to claim huge benefits for both rules by double counting the same pollution reductions in each rule.

The proposed rule's treatment of co-benefits and its requirement that EPA properly account for pollution reductions from existing rules when developing baselines should help EPA use more appropriate baselines to obtain more accurate benefit estimates.

The rest of the elements in the proposed rule are relatively straightforward. Its aim is to standardize how EPA does BCA across its cache of CAA rulemakings. It also builds off best practices that EPA (and many other agencies) was supposed to have been following for years.

CONCLUSION

The proposed rule would help standardize EPA's BCA process, which will improve its transparency and the public's ability to understand how benefits and costs estimates are derived. Its effect on co-benefits and double counting of benefits will be the most impactful, as that will require the agency to demonstrate that the costs of regulating a specific pollutant are outweighed by the benefits of removing that pollutant.

The question for some will be why EPA should codify these principles in its regulatory code. The answer is that by promulgating a rule these principles will be longer lasting. In order to remove the rule, a future EPA would have to go through the time-consuming rulemaking process to alter it. Of course, that all depends on whether the Trump Administration is able to finalize it while still in office.

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