

[Union of Concerned Scientists

August 13, 2018

To: Acting Administrator Andrew Wheeler

Docket ID No. EPA-HQ-OA-2018-0107

Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process; Vol. 83, Federal Register, No. 114, Wednesday, June 13, 2018. Advance notice of proposed rulemaking. Environmental Protection Agency: 40 CFR Ch. I.

U.S. Environmental Protection Agency, EPA Docket Center, Mail Code: 1809T, 1200 Pennsylvania Ave, NW, Washington, DC 20460.

Submitted directly to *Regulations.gov*

Acting Administrator Wheeler:

The Union of Concerned Scientists (UCS) condemns the Environmental Protection Agency's (EPA) deeply damaging initiative—proposed under the guise of “increasing consistency and transparency”—to advance the interests of polluting industries over the wellbeing of the American public. The mission of the EPA is to protect human health and the environment. This advance notice of proposed rulemaking (ANPRM) reveals an agency actively subverting that mission and disavowing its foundational statutes. We denounce this effort.

UCS puts rigorous, independent science to work to solve our planet's most pressing problems. We work on behalf of our more than 500,000 supporters and network of over 20,000 scientists to develop carefully considered and scientifically robust approaches to complex issues. We have a long history of collaborating with federal agencies to develop, strengthen, and advance regulations relating to the protection of human health and welfare—and *also* of countering agency actions when they fly in the face of mandated roles and responsibilities.

Now is just such a time requiring that we push back. This ANPRM is carefully constructed to conceal intentions and motivations, but it is clear from the agency's surrounding narrative¹ and parallel policy initiatives² that it is being advanced in pursuit of a single outcome: to elevate the interests of industry over those of the general public.

In particular, through this action the EPA is working to develop a set of practices that would severely restrict the benefits considered when developing a rule. This would *not* help the agency arrive at a closer approximation of the truth, but rather assist a select corporate few in avoiding the cost of interventions at the expense of the health and welfare of the many. What's more, EPA is advancing this revision at the same time that it is separately working to hamstring safeguards for human health and the environment by placing untenable restrictions on the research used to inform the rulemaking process.³ Together, these two initiatives threaten to severely curtail the protection of public health and the environment.

¹ U.S. Environmental Protection Agency. 2018. News release: EPA Administrator Pruitt proposes cost-benefit analysis reform. Online at <https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-cost-benefit-analysis-reform>, accessed July 27, 2018.

² U.S. Environmental Protection Agency. 2017. *Repeal of carbon pollution emission guidelines for existing stationary sources: Electric utility generating units: Proposed Rule*. 82 Fed. Reg. 48,035. Online at www.gpo.gov/fdsys/pkg/FR-2017-10-16/pdf/2017-22349.pdf, accessed July 27, 2018.

³ U.S. Environmental Protection Agency. 2018. *Strengthening transparency in regulatory science: Proposed Rule*. 83 Fed. Reg. 18,768. Online at www.gpo.gov/fdsys/pkg/FR-2018-04-30/pdf/2018-09078.pdf, accessed July 27, 2018.

We focus these comments on three main points, all of which ultimately lead to our calling for the agency to abandon this cynical maneuvering and return to its core mission.

1. **Ignoring co-benefits is illogical and would permanently tilt the scales in favor of industry.** Co-benefits are those that accrue as a direct consequence of the implementation of a rule but not due to reductions of the target pollutant itself. EPA is now suggesting that it should ignore co-benefits when considering a rule because they are not related to the primary pollutant of concern. This is absurd on its face, and even more so when coming from an administration that repeatedly touts the value of regulatory efficiency.

Co-benefits are all too real for the people that would otherwise regularly suffer from continued asthma attacks, lost work days, and emergency room visits. As a result, their inclusion in regulatory evaluations can help point to more efficient, and more effective, pathways. What's more, these indirect benefits are just as real as the indirect *costs* that the agency is still fully intending to include in its ledger. As a result, it is hard to view this deeply imbalanced approach as anything other than an attempt to permanently tilt the scales in favor of industry.

2. **Requiring consistency across regulatory actions goes against the agency's statutory requirements.** The development of regulations is an undoubtedly complex process, demanding some level of interpretation in the face of certain categories of costs and benefits that can be challenging to quantify. However, as our lawmakers rightfully recognized when they developed EPA's underlying statutes, different regulatory actions demand consideration of different factors. As a result, this push for "consistency" by the agency is not just inconsiderate of the legitimate differences that exist across actions, but is also flat-out counter to statutory requirements. Even worse, the Administration's approach prioritizes establishing uniformity over the protection of public health. Setting regulations at a level least protective of public health is neither effective nor efficient, and is indeed *inconsistent* with EPA's mission and statutory obligations.
3. **EPA's preliminary attempt at implementing this framework was roundly criticized and revealed its bias.** EPA previously tried out this co-benefits-limited approach in its recent proposed repeal of the Clean Power Plan, including in the proposal's associated regulatory impact analysis (RIA).⁴ Specifically, the agency attempted to separate out and consider only the benefits accruing to carbon dioxide emissions reductions while excluding the billions of dollars of additional health benefits also anticipated to accrue from such actions, such as significant concomitant reductions in fine particulate matter. Simultaneously, the agency deeply discounted the benefits it calculated for carbon dioxide emissions reductions⁵ and fiddled with how it counted the costs and savings from energy efficiency programs⁶—the latter of which resulted in no net change, but did allow for the agency to quote much higher expected costs for the original rule.

These actions reveal an agency desperate to repeal a rule its new leaders do not like, and willing to deploy any accounting tricks it can to stack the numbers in its favor. It is clear that EPA is not interested in

⁴ U.S. Environmental Protection Agency. 2017. *Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal*. Online at https://www.epa.gov/sites/production/files/2017-10/documents/ria_proposed-cpp-repeal_2017-10_0.pdf, accessed July 27, 2018.

⁵ Environmental Defense Fund, Institute for Policy Integrity at New York University School of Law, Montana Environmental Information Center, Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists, Western Environmental Law Center, and WildEarth Guardians. 2018. *Comments on Flawed Estimates of the Social Cost of Carbon in the Proposed Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*. Submitted to www.regulations.gov, Docket ID No. EPA-HQ-OAR-2017-0355.

⁶ Environmental and public health organizations. 2018. *Joint Comments of Environmental and Public Health Organizations Regarding the "Proposed Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 82 Fed. Reg. 48,035 (Oct. 16, 2017), Comments Specific to the "Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal."* Submitted to www.regulations.gov, Docket ID No. EPA-HQ-OAR-2017-0355. And: Union of Concerned Scientists. 2018. *Technical comments on the State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Advance Notice of Proposed Rulemaking*. Cambridge, MA. Online at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2017-0545-0284>, accessed on March 22, 2018.

identifying objectively better approaches, but rather simply finding those that bolster its sustained assault on public health protections.

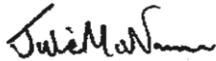
EPA exists to protect human health and the environment, and in its pursuit of that mission, the agency states that it works to ensure that, among additional protections: “Americans have clean air, land, and water; national efforts to reduce environmental risks are based on the best available scientific information; [and] federal laws protecting human health and the environment are administered and enforced fairly, effectively and as Congress intended.”⁷

This ANPRM reveals an agency making a mockery of that mission and abdicating the very roles and responsibilities that Congress entrusted it with. The public deserves an agency that is striving to protect its health, not devalue it.

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⁷ U.S. Environmental Protection Agency. 2018. Our Mission and What We Do. Online at <https://www.epa.gov/aboutepa/our-mission-and-what-we-do>, accessed July 27, 2018.