

Comments of Environmental Defense Fund at EPA’s Public Hearing on “Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process,” 85 Fed. Reg. 35,612 (June 11, 2020)

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Good morning. My name is Ben Levitan, and I’m a Senior Attorney on the U.S. Clean Air team at Environmental Defense Fund. On behalf of our more than 2.5 million members and supporters, EDF urges EPA to withdraw this harmful and unnecessary proposal, which could distort the agency’s assessment of benefits and costs of all significant Clean Air Act protections going forward. It could skew analyses of everything from health-based air quality standards, to emission standards for vehicles and large industrial facilities, to chemical disaster prevention safeguards.

Addressing the media shortly before signing this proposal, Administrator Wheeler provided a troubling indication of his intent: EPA would no longer consider co-benefits when justifying public health protections. He specifically targeted the Mercury and Air Toxics Standards, calling the consideration of co-benefits in that context a “shell game.” But what Wheeler dismissed as a “shell game” includes the prevention of up to 11,000 premature deaths—and the avoidance of other health harms, including 130,000 asthma attacks—every year. Characterizing these co-benefits as some sort of accounting trick ignores their real, vital impacts for families and communities across America. Simply put, thousands of lives depend on EPA prioritizing public health and the environment, as it’s required to do. That said, there is an *actual* shell game at work: Wheeler is dismissing the co-benefits of reduced particle pollution from MATS, while at the same time declining to issue health-protective standards for ambient air quality that target the pollutant directly. This immediately undermines any suggestion in the proposal that EPA might compensate for the loss of co-benefits by directly regulating the pollutant at issue. Instead, the proposal could pave the way for the agency to entirely disregard co-benefits—and the corresponding lives at stake.

Nowhere does the proposal forthrightly acknowledge the harm it threatens. Rather, EPA expressly abstains from evaluating the environmental justice impacts of the proposal on communities of color and low-income communities, flouting Executive Order 12,898 on the purported grounds that this action “does not establish an environmental health or safety standard.” But the executive order, by its terms, requires federal agencies to ensure that their “programs, policies, and activities . . . do not . . . have the effect of . . . denying persons (including populations) the benefits of . . . such programs, policies, and activities.” A *policy* affecting how EPA calculates or assesses public health *benefits* falls squarely within the executive order’s purview, and EPA must clearly explain the environmental justice impacts.

It’s especially troubling that the proposal appears to arbitrarily, and unlawfully, accord greater weight to costs than benefits, further eroding the statutory rights of those the Clean Air

Act was designed to protect. The proposal seems animated by an underlying assumption that the agency has historically underestimated costs or overestimated benefits. But nowhere does the agency substantiate that claim, which was apparently made by unidentified commenters on a 2018 ANPR. In fact, EPA's assumption defies the evidence, which if anything shows the opposite: the benefits of Clean Air Act protections have exceeded expectations, while the costs have been less than anticipated. Yet the proposal does not assess ways that EPA has historically underestimated benefits and overestimated costs, nor does it consider whether systematic changes are in order to fully account for benefits—further indicating that this rulemaking is arbitrary and one-sided.

In addition to its many other flaws, this proposal is simply unnecessary. EPA has long utilized its *Guidelines for Preparing Economic Analyses*, which it is currently revising. The proposal offers no compelling rationale for now promulgating a regulation on the same topic.

In sum, EPA has not demonstrated that this regulation would solve any problem, but there are many ways in which it could distort, skew, or impede future cost-benefit analyses for Clean Air Act rulemakings. We strongly urge EPA to withdraw this ill-conceived proposal. Thank you.