

# Costs/Benefits in the Environmental Rulemaking Process: June 7th U.S. Environmental Protection Agency Advance Notice of Proposed Rulemaking



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06/11/2018

The United States Environmental Protection Agency (“EPA”) issued an Advance Notice of Proposed Rulemaking (“ANPR”) titled:

*Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process*

EPA states it is soliciting comments on whether and how it should promulgate regulations that provide a “consistent and transparent interpretation relating to the consideration of weighing costs and benefits in making regulatory decisions in a manner consistent with applicable authorizing statutes.”

The ANPR preamble states that a number of the federal statutes it utilizes to promulgate regulations either require or allow some consideration of costs and benefits “when setting pollution standards.” However, EPA states that there can be a significant variation in terminology and specificity provided in each statute in terms of the scope of cost and benefit considerations. For example, the ANPR contrasts language from two federal environmental statutes, noting:

. . . Section 301 of the CWA instructs the Administrator to select the “best available technology economically achievable” . . . and then requires EPA to take into account the cost of achieving effluent reductions when assessing best available technology . . . . Section 111 of the CAA, however, requires the Administrator to set “standards of performance” for reducing air pollution . . . , defined as “the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated” . . .

Input is sought regarding topics such as:

- The nature of potential concerns regarding perceived inconsistency and lack of transparency
- Potential approaches for increasing consistency and transparency in considering costs and benefits in the rulemaking process
- What would increased consistency look like?
- What would improved transparency look like?

- To what extent would requiring a systematic retrospective review element in new regulations help ongoing consistency and transparency in how regulatory decision making will adapt over time to new information?
- Potential for issuing regulations to govern EPA's approach in future rulemakings

A number of organizations have already weighed in, both pro and con, on the ANPR. For example, the Sierra Club states that the ANPR is:

. . . an effort to change how EPA calculates the costs and benefits of its clean air and water protections – a precursor to Pruitt making it more difficult for the Agency to make strong, science-based rules to protect public health.

The American Forest & Paper Association states in contrast that:

. . . we applaud this important EPA initiative to strongly embrace this longstanding, bipartisan principle when interpreting and implementing its regulatory statutes. Common-sense regulatory policy that ensures regulations do more good than harm will strengthen the foundation for growing our economy while protecting the environment and creating opportunities for all Americans, now and in the future. . .

A copy of the [ANPR](#) can be downloaded here.