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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

May 15, 2017

The Honorable Samantha Dravis
Regulatory Reform Officer and Associate
Administrator for Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Associate Administrator Dravis,

In Executive Order 13777, President Trump has established a process for agencies to identify unnecessary regulatory burdens that warrant potential revision, repeal, or replacement. In Executive Order 13783, President Trump initiated a review process for identifying agency actions that burden the development or use of domestically produced energy resources. We write to support ongoing efforts of the Environmental Protection Agency (EPA) to implement these Executive Orders.

As you review regulations pursuant to these Executive Orders, we request that you give particular attention to regulations that relied on indefensible cost-benefit analyses as well as regulations that were developed through flawed procedures that evaded mandatory review processes. In particular, we request you review all EPA regulations that rely on either the "social cost of carbon" or "co-benefits" to justify the cost burden the regulations place on the American economy.

The Environment and Public Works Committee has highlighted the fact that the metrics used by the prior administration to quantify the "social cost of carbon" suffer from procedural flaws and troubling substantive assumptions.[1] We support the President's necessary rescission of those metrics through Executive Order 13783. We request that EPA re-evaluate any rules that relied on those metrics to justify regulatory impacts.

The Committee also has documented concerns regarding EPA's practice of relying heavily on "co-benefits" in Regulatory Impact Analyses (RIAs) for rules.[2] Purported benefits are labeled "co-benefits" when they address pollutants that are not the subject of the EPA rule at issue. Alleged "co-benefits" for criteria pollutants are based on further reductions below levels already

[1] *E.g.*, Letter from 10 Senators to the Hon. Gina McCarthy, Adm'r, EPA (July 21, 2015), https://www.epw.senate.gov/public/_cache/files/3a4a1537-f483-4137-b9e5-1f18e23316fe/07.21.2915-dear-administrator-mccarthy-re-scc-doc-request.pdf.

[2] Oversight of Regulatory Impact Analyses for U.S. Environmental Protection Agency Regulations, Senate Comm. on Env't & Public Works Subcomm. on Superfund, Waste Management, and Regulatory Oversight (Oct. 21, 2015), https://www.epw.senate.gov/public/index.cfm/hearings?ID=D04CBC93-8FD7-461E-BCE1-C3B0D1F77126 (statements of William L. Kovacs, Sam Batkins and Diana Furchtgott-Roth).

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determined by EPA to protect public health and welfare under the Clean Air Act's National Ambient Air Quality Standards program.[3] One of the most glaring examples is the RIA for the Mercury and Air Toxics Standards (MATS) Rule,[4] a rule finalized in 2011 to address emissions of hazardous air pollutants from power plants. When EPA finalized the MATS Rule, it claimed health benefits of $37 to 90 billion.[5] EPA's direct quantified benefits of the rule – that is, those associated with reductions in hazardous air pollutants – totaled only $4 to 6 ***million***, compared to $9.6 ***billion*** in annual costs.[6] We request that you review any rules that rely on such purported benefits.

Finally, the Committee has documented failures with EPA's implementation of mandatory review processes intended to evaluate and curb the potential negative impacts of federal regulation.[7] These include those required by the Unfunded Mandates Reform Act (state, local, and tribal governments and private sector) and the Regulatory Flexibility Act (small businesses and other entities).[8] These generally applicable requirements must in some cases be supplemented by requirements specific to EPA, such as Clean Air Act Section 321(a),[9] which mandates evaluation of employment losses and shifts associated with administration and enforcement of Clean Air Act programs. It is essential that EPA carry out its statutory responsibilities in evaluating the effects of regulation. We request that you also review any rules that did not comply with these statutorily required review processes.

Thank you for your work in implementing President Trump's Executive Orders.

Sincerely,

John Barrasso, M.D.
Chairman

Shelley Moore Capito
U.S. Senator

Joni K. Ernst
U.S. Senator

Roger Wicker
U.S. Senator

[3] Clean Air Act Section 109(b), 42 U.S.C. 7409(b).
[4] 77 Fed. Reg. 9304 (Feb. 16, 2012), https://www.gpo.gov/fdsys/pkg/FR-2012-02-16/pdf/2012-806.pdf.
[5] EPA, Fact Sheet, Benefits and Costs of Cleaning Up Toxic Air Emissions from Power Plants, *available at* https://www.epa.gov/sites/production/files/2015-11/documents/20111221matsimpactsfs.pdf.
[6] 77 Fed. Reg. at 9425, 9428.
[7] *E.g.*, Oversight of Regulatory Impact Analyses for U.S. Environmental Protection Agency Regulations, Senate Comm. on Env't & Public Works Subcomm. on Superfund, Waste Management, and Regulatory Oversight (Oct. 21, 2015), https://www.epw.senate.gov/public/index.cfm/hearings?ID=D04CBC93-8FD7-461E-BCE1-C3B0D1F77126 (statement of William L. Kovacs).
[8] 2 U.S.C. 1531-38; 5 U.S.C. 601-12.
[9] 42 U.S.C. 7621(a).

Deb Fischer
U.S. Senator

M. Michael Rounds
U.S. Senator

James M. Inhofe
U.S. Senator

John Boozman
U.S. Senator