



June 30, 2016

TO: Members, Subcommittee on Energy and Power

FROM: Committee Majority Staff

RE: Hearing entitled “A Review of EPA’s Regulatory Activity During the Obama Administration: Energy and Industrial Sectors”

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## I. INTRODUCTION

On Wednesday, July 6, 2016, at 10:00 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing entitled “A Review of EPA's Regulatory Activity During the Obama Administration: Energy and Industrial Sectors.” The hearing will examine major regulations issued by the Environmental Protection Agency (EPA) since 2009 affecting the energy and industrial sectors, and additional rules and initiatives the agency plans to pursue prior to the end of the Administration.

## II. WITNESSES

### Panel I

- **Janet McCabe**, Acting Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency.

### Panel II

- **Travis Kavulla**, President, National Association of Regulatory Utility Commissioners and Vice-Chairman, Montana Public Service Commission;
- **David J. Porter**, Chairman, Railroad Commission of Texas;
- **Lynn D. Helms**, Director, North Dakota Industrial Commission, Department of Mineral Resources;
- **Charles D. McConnell**, Executive Director, Energy and Environment Initiative, Rice University and former Assistant Secretary for Fossil Energy, U.S. Department of Energy; and
- **Robert Weissman**, President, Public Citizen.

### III. BACKGROUND

Established by executive order in 1970 to implement a number of environmental laws, the EPA over multiple administrations since the early 1990s has been publishing several hundred new rules each year. The pace of this regulatory activity has not abated during the current Administration, particularly with regard to Clean Air Act (CAA) regulations and the controversial promulgation of a number of greenhouse gas (GHG) related rules that are not expressly authorized in the statute.

In particular, EPA has published approximately 3,900 final rules in the Federal Register since 2009.<sup>1</sup> *See* Appendix 1. This regulatory activity has included an expanding set of [over 100 GHG-related rules](#), a number of which have economic impacts measured in the billions of dollars. Many of the EPA's new GHG and other major rules affecting the energy and industrial sectors are deemed to be economically significant and cumulatively they impose billions of dollars in new compliance costs.<sup>2</sup> *See, e.g.* Appendix 2. All told, the new EPA regulations issued since 2009 are adding to thousands of existing rules and restrictions already issued by the agency.<sup>3</sup>

With respect to the nation's electricity sector, EPA has issued a suite of new rules, including its "Mercury and Air Toxics Standards" rule and a variety of other regulations affecting coal-fired and natural gas-fired electric generating units. Among these rules are GHG standards that effectively ban the construction of new coal-fired power plants for the foreseeable future. These rules also include the agency's "Clean Power Plan," which applies to existing power plants and seeks to compel a massive shift away from coal and natural gas generation to renewable energy, including wind and solar, and to make other changes relating to the transmission, distribution, and consumption of energy. Despite the U.S. Supreme Court's unprecedented [stay](#) of this rule, EPA is continuing to move forward with new rules to implement the plan, including a proposed "[Clean Energy Incentive Program](#)."

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<sup>1</sup> For a list of priority rules tracked by the agency on its website, see [Final Rule Published Phase](#) (rules issued during the past year) and [Archived Rulemakings](#) (rules issued 2010-2015). For pending rules, see [Rules by Projected Publication Date](#); *see also* [Agency Rule List – Spring 2016](#). For EPA rules currently under review by the Office of Management and Budget (OMB), see <http://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp>.

<sup>2</sup> A regulatory action is considered "economically significant" if it is likely to have: "an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." *See* Section 3(f)(1) of [Executive Order 12866](#).

<sup>3</sup> The George Mason University Mercatus Center estimates that, as of 2014, EPA regulations accounted for 156,201 restrictions—indicated as language that provides "shall," "must," "may not," "prohibited," and "required"—and 13,081,925 words in the Code of Federal Regulations (CFR). *See* [RegData 2.2](#): (Summary extracts by agency, line 8193); *see also*, "[The delegate-and-forget-about-it doctrine and government's fourth branch](#)," *The Hill*, P. McLaughlin and O. Sherouse, Mercatus Center (Oct. 9, 2015) ("The EPA alone is responsible for about 14 percent of all federal regulatory restrictions. In fact, at more than 150,000 restrictions, the EPA more than doubles the next largest agency, the IRS, at about 58,000.")

With respect to the nation's oil and gas sector, EPA has moved forward with suites of new regulations under the CAA, including new standards issued in 2012 to regulate emissions across the oil and gas sector, and revised standards in 2016, which have included GHG "New Source Performance Standards" that set methane standards for new and reconstructed sources in the oil and gas sector. See Appendix 2. The EPA has begun the process of requiring companies operating existing oil and gas sources to submit data that the agency will then use to develop GHG standards for existing sources. The agency has also been coordinating with the Department of the Interior's Bureau of Land Management, which has issued [regulations](#) for the oil and gas sector on federal lands recently [struck down](#) by a federal court.

Significant questions and concerns have been raised by states and affected entities regarding the complexity, costs, legality, and feasibility of certain of the agency's rules relating to the energy and industrial sectors.<sup>4</sup> Concerns have also been raised regarding the cumulative compliance costs of EPA's regulations, which are projected to be in the hundreds of billions of dollars and to have grown by more than \$50 billion in annual costs since 2009, according to recent analyses and estimates.<sup>5</sup>

#### IV. ISSUES

The following issues relating to EPA's major rules issued since 2009 affecting the energy and industrial sectors may be examined at the hearing:

- Legal, cost, and practical implementation issues;
- Effects of the rules on the electricity and oil and gas sectors;
- Impacts on the affordability and reliability of energy supplies;
- Impacts on American households and consumers; and,
- Impacts on American workers, jobs, and economic growth.

#### V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Mary Neumayr, Peter Spencer, or Tom Hassenboehler of the Committee staff at (202) 225-2927.

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<sup>4</sup> To date, the Supreme Court has held that with respect to several of the rules, EPA has acted beyond the scope of its statutory authority. See, e.g., [Michigan v. EPA](#), No. 14-46 (June 29, 2015)(finding EPA had acted unreasonably when it determined costs irrelevant to the decision to issue the agency's "Mercury and Air Toxics Standards" and regulate power plants under CAA Section 112); [Utility Air Regulatory Group v. EPA et al.](#), No. 12-1146 (June 23, 2014) (invalidating agency's "Tailoring Rule" and finding that EPA exceeded its statutory authority when it interpreted the CAA to require air permits for stationary sources based on GHG emissions).

<sup>5</sup> See, e.g., EPA Case Study, 2016 Edition, [Ten Thousand Commandments](#), An Annual Snapshot of the Federal Regulatory State at p. 10, Figure 1 and p. 54 (estimating annual costs of EPA regulation are \$386 billion and represent 2.1 percent of GDP); [Red Tape Rising 2016: Obama Regs Top \\$100 Billion Annually](#), J. Gattuso and D. Katz, (May 23, 2016) (estimating the total annual costs of Obama Administration rules to exceed \$100 billion, and that nine EPA rules in 2015 alone increased annual regulatory costs by \$11.1 billion). See also, e.g. OMB 2015 [Report](#) to Congress on the Benefits and Costs of Federal Regulation, at p. 12 (estimating EPA's CAA regulations for the period 2005 through 2014 accounted for 45 to 55 percent of the costs of all Federal regulation).

## **APPENDIX 1**

### **EPA Rules (2009-Present)\***

|                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>2016 (Jan. 1-June 15)</u></b><br>Total Number of Final Rules: <b>219 Rules (1,606 pages)</b><br>Total Number of Pages in Federal Register (including Final & Proposed Rules, and Notices): <b>3,658 pages</b> |
| <b><u>2015</u></b><br>Total Number of Final Rules: <b>557 Rules (5,361 pages)</b><br>Total Number of Pages in Federal Register (including Final & Proposed Rules, and Notices): <b>11,054pages</b>                  |
| <b><u>2014</u></b><br>Total Number of Final Rules: <b>551 Rules (4,546 pages)</b><br>Total Number of Pages in Federal Register (including Final Rules, Proposed Rules, and Notices): <b>10,064 pages</b>            |
| <b><u>2013</u></b><br>Total Number of Final Rules: <b>513 Rules (3,650 pages)</b><br>Total Number of Pages in Federal Register (including Final Rules, Proposed Rules, and Notices): <b>8,252 pages</b>             |
| <b><u>2012</u></b><br>Total Number of Final Rules: <b>635 Rules (5,637 pages)</b><br>Total Number of Pages in Federal Register (including Final Rules, Proposed Rules, and Notices): <b>11,569 pages</b>            |
| <b><u>2011</u></b><br>Total Number of Final Rules: <b>533 Rules (4,842 pages)</b><br>Total Number of Pages in Federal Register (including Final Rules, Proposed Rules, and Notices): <b>11,383 pages</b>            |
| <b><u>2010</u></b><br>Total Number of Final Rules: <b>479 Rules (4,746 pages)</b><br>Total Number of Pages in Federal Register (including Final Rules, Proposed Rules, and Notices): <b>11,491 pages</b>            |
| <b><u>2009</u></b><br>Total Number of Final Rules: <b>437 (3,453 pages)</b><br>Total Number of Pages in Federal Register (including Final Rules, Proposed Rules, and Notices): <b>8,427 pages</b>                   |

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TOTAL NUMBER OF FINAL RULES FOR 2009-2016: **3,924 Rules (33,841 pages)**

TOTAL NUMBER OF PAGES IN FEDERAL REGISTER FOR 2009-2016: **75,898 pages**

**\*Compiled by Majority Staff of the Committee on Energy and Commerce  
Updated as of June 15, 2016**

## APPENDIX 2

### MAJOR EPA RULES AFFECTING U.S. ENERGY AND INDUSTRIAL SECTORS

#### ENERGY SECTOR

##### 1. CLEAN POWER PLAN (Power Plants)

**Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (a/k/a “111(d) Rule”)**, published Oct. 23, 2015. EPA Links: [Fact Sheets](#); [Rule](#); [Clean Power Plan for Existing Power Plants](#). See also, [Clean Energy Incentive Program and Proposed Rule](#); [Model Trading Rules](#).

- EPA’s Estimate of Compliance Costs: [-\\$1.4 billion to \\$2.5 billion annually in 2020; -\\$1 billion to \\$3 billion in 2025; \*\*-\\$5.1 billion to \\$8.4 billion annually in 2030\*\*](#)

##### 2. CARBON POLLUTION STANDARDS (Power Plants)

**Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units a/k/a “111(b) Rule”**), published Oct. 23, 2015. EPA Links: [Fact Sheet](#); [Rule](#); see also [Carbon Pollution Standards for New, Modified and Reconstructed Power Plants](#)

- EPA’s Estimate of Compliance Costs: [“\[T\]he final new source standards are expected to have no, or negligible, costs or quantified benefits associated with them.”](#)

##### 3. MERCURY AND AIR TOXICS STANDARDS (Power Plants)

**National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units (a/k/a “MATS” or “Utility MACT”)**, published Feb. 16, 2012. EPA Links: [Fact Sheets](#); [Rule](#); [Regulatory Actions](#); [EPA Proposes Supplemental Finding About MATS and Costs](#)

- EPA’s Estimate of Compliance Costs: [\\$9.6 billion annually](#)

##### 4. CROSS STATE AIR POLLUTION RULE (Power Plants)

**Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals (a/k/a or “CSAPR” or “Transport Rule”)**, published Aug. 8, 2011. EPA Links: [Fact Sheet](#); [Rule](#); [Cross-State Air Pollution Rule](#); [Bulletins](#)

- EPA’s Estimate of Compliance Costs: [\\$2.4 billion annually](#) (including [\\$800 million, along with the roughly \\$1.6 billion per year](#) in capital investments already under way due to “Clean Air Interstate Rule”).

#### 5. COAL ASH RULE (Power Plants)

**Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities**, published April 17, 2015. EPA Links: [Fact Sheet](#); [Rule](#); [Final Rule: Disposal of Coal Combustion Residuals from Electric Utilities](#)

- EPA's Estimate of Compliance Costs: [\\$509 million annually](#) to [\\$735 million annually](#)

#### 6. EFFLUENT GUIDELINES (Power Plants)

**Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category**, published Nov. 3, 2015. EPA Links: [Fact Sheet](#); [Rule](#); [Steam Electric Power Generating Effluent Guidelines - 2015 Final Rule](#)

- EPA's Estimate of Compliance Costs: [\\$471.2 million to \\$479.5 million annually](#)

#### 7. 316(b) RULE (Power Plants)

**Cooling Water Intake Structures Rule (a/k/a "Cooling Towers" Rule)**, published Aug. 15, 2014. EPA Links: [Rule](#); [Cooling Water Intakes-Final 2014 Rule for Existing Electric Generating Plants and Factories](#)

- EPA's Estimate of Compliance Costs: [\\$275 million to \\$297 million annually](#)

#### 8. AIR RULES FOR THE OIL & GAS INDUSTRY

**Oil and Natural Gas Sector: New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants Reviews**, published Aug. 16, 2012. EPA Links: [Overview Fact Sheet](#); [Rule](#); [Regulatory Actions](#)

- EPA's Estimate of Compliance Costs: [\\$170 million annually](#) (total annualized engineering costs); EPA projects cost savings of \$11 million to \$19 million annually associated with projected sales of captured natural gas.

#### 9. ACTIONS TO REDUCE METHANE EMISSIONS FROM THE OIL AND GAS INDUSTRY

**EPA Actions to Reduce Methane Emissions from the Oil and Gas Industry: Final Rules and Draft Information Collection Request (ICR)**, published June 2016. EPA Links: [Overview Fact Sheet](#); [Proposed ICR](#); [Methane-Addressing GHGs and VOCs from the Oil and Gas Industry](#).

**-Oil and Natural Gas Sector: Emissions Standards for New, Reconstructed, and Modified Sources**, published June 3, 2016. EPA Links: [Overview Fact Sheet](#); [Rule](#); [Regulatory Actions](#)

- EPA's Estimate of Compliance Costs: [\\$320 million annually](#) in 2020, [\\$530 million annually](#) in 2025

**-Draft Information Collection Request (ICR) for the Oil and Natural Gas Industry**, published June 3, 2016. EPA Links: [Fact Sheet](#); [Notice](#).

#### INDUSTRIAL AND MANUFACTURING SECTORS\*

10. **BOILER MACT**

**National Emissions Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters**, published Jan. 31, 2013. EPA Links: [Fact Sheet](#); [Rule](#); [Regulatory Actions](#); [Proposed and Promulgated Rules](#).

- EPA's Estimate of Compliance Costs: [\\$1.4 billion to \\$1.6 billion annually](#)

11. **CEMENT MACT**

**National Emissions Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants**, published Sept. 9, 2010. EPA Links: [Fact Sheet](#); [Rule](#); [Regulatory Actions](#)

- EPA's Estimate of Compliance Costs: [\\$926 million to \\$950 million annually](#) in 2013

12. **BRICK MACT**

**National Emissions Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; Clay Ceramics Manufacturing**, published Sept. 24, 2015. EPA Links: [Rule](#); [Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing](#)

- EPA's Estimate of Compliance Costs: [\\$24.6 million annually](#)

13. **OZONE NAAQS**

**Revised Ground-level Ozone Standards** published Oct. 26, 2015. EPA Links: [Fact Sheets](#); [Rule](#); [2015 NAAQS for Ozone](#); [Table of Historical O3 NAAQS](#)

- EPA's Estimate of Compliance Costs: [\\$1.4 billion annually](#) in 2025 (excluding \$800 million for California)

14. **SO2 NAAQS**

**Revised Sulfur Dioxide Standards**, published June 22, 2010. EPA Links: [Fact Sheet](#); [Rule](#); [Regulatory Actions](#); [SO2 Primary NAAQS](#); [SO2 Secondary Standards](#); [Table of Historical SO2 NAAQS](#); [SO2 Implementation; Programs and Requirements for Reducing Sulfur Dioxide](#)

- EPA's Estimate of Compliance Costs: [\\$1.5 billion annually](#) in 2020

15. **PM 2.5 NAAQS**

**Revised Fine Particulate Matter Standards** published Jan. 15, 2013. EPA Links: [Fact Sheet](#); [Rule](#); [Regulatory Actions](#); [Particulate Matter Standards](#); [Table of Historical PM NAAQS](#)

- EPA's Estimate of Compliance Costs: [\\$53 million to \\$350 million annually](#) in 2020

16. **RMP Rule**

**Pending Rule: Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act.** Proposed rule published March 14, 2016. EPA Links: Fact Sheet; [Proposed Rule](#); *see also* [Proposed Changes to the Risk Management Program](#)

- EPA's Estimate of Compliance Costs: \$158.3 million to \$161 million annually

**\*Note:** These rules may also impact, directly or indirectly, the energy sector.