

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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July 27, 2016

Ms. Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Ms. McCabe:

Thank you for appearing before the Subcommittee on Energy and Power on July 6, 2016, to testify at the hearing entitled "A Review of EPA's Regulatory Activity During the Obama Administration: Energy and Industrial Sectors."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on August 10, 2016. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby Rush, Ranking Member, Subcommittee on Energy and Power

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Ed Whitfield

1. According to a recent report issued by the Competitive Enterprise Institute, the total annual compliance costs of EPA regulations are now approximately \$386 billion.¹ If this estimate is not accurate, please provide the agency’s best estimate of the current annual compliance costs for its rules.
2. Pursuant to Executive Order 12866, which addresses regulatory planning and review, a “significant regulatory action” includes an action that is likely to result in a rule that may “[h]ave an annual effect on the economy of \$100 million or more.” Pursuant to Executive Order 12866, such regulatory actions must be submitted for review by Office of Management and Budget (OMB).
 - A. Please identify each rule issued by EPA since 2009 which imposes costs of \$100 million or more in any one year, and the agency’s estimate of the compliance costs.
 - B. Please identify each rule proposed but not yet finalized which would impose costs of \$100 million or more in any one year, and the agency’s estimate of the compliance costs.
 - C. Does EPA track the *total* compliance costs of its “significant regulatory actions”? If yes, please provide the total costs for each of the years 2009 through the present.
3. The EPA’s rule disapproving Oklahoma’s and Texas’s plans for controlling regional haze and imposing EPA’s own federal plan was recently stayed by the federal courts. This rule is estimated by affected stakeholders to impose costs of \$2 billion.
 - A. Did EPA submit this federal plan to OMB for review? If not, why not?
 - B. Does EPA submit federal plans developed pursuant to the Clean Air Act that impose costs in excess of \$100 million for OMB and interagency review? If not, why not?
 - C. Is there any interagency review of such federal plans as they are developed?
4. In Questions for the Record following the Energy and Commerce Committee’s March 22, 2016 hearing regarding the EPA’s Fiscal Year 2017 Budget, we asked for the agency’s estimate of the total cost of the “Mercury and Air Toxics Standards.” In response, EPA declined to provide a specific amount, and instead stated that “The EPA determined the projected annual cost of MATS is a small fraction when compared to overall sales in the power sector-between just 2.7 and 3.5 percent of annual electricity sales from 2000 to 2011. The EPA also determined that annual compliance capital and operating expenditures to

¹ See “Ten Thousand Commandments, An Annual Snapshot of the Federal Regulatory State, 2016 Edition” available at <https://cei.org/sites/default/files/Wayne%20Crews%20-%20Ten%20Thousand%20Commandments%202016%20-%20May%204%202016.pdf>.

comply with MATS are a small fraction of the industry's capital and operating expenditures in historical context.”

- A. What is the approximate dollar amount of 2.7 percent of annual electricity sales from 2000 to 2011?
 - B. What is the approximate dollar amount of 3.5 percent of annual electricity sales from 2000 to 2011?
 - C. What is the approximate amount EPA determined would be the annual compliance capital and operating expenditures to comply with MATS?
5. EPA published its 111(b) rule setting carbon dioxide standards for new coal-fired power plants in October 2015. In response to questions for the record concerning the technical and economical readiness of CCS for new coal-fired power plants following the Committee's March 22, 2016 EPA budget hearing with EPA Administrator McCarthy, EPA states that “assertions about SaskPower Boundary Dam Unit 3 operational failures have been largely misstated or mischaracterized.” EPA states further that “The carbon dioxide (CO₂) capture system at SaskPower Boundary Dam is operating successfully.... Operational issues in the first year of operation were related largely to ancillary systems and not to the carbon capture system, and appear to have been successfully resolved.”

This response does not square with current facts concerning the capture technology, as reported by SaskPower. For example, a July 2016 statement in SaskPower's own Boundary Dam performance report for June explicitly identifies unresolved problems with the carbon capture system, fully 20 months after startup and eight months after a major renovation. Following a maintenance outage just in May, SaskPower reports for June that the “facility needed to be taken down on separate occasions due to issues with the chemistry of the capture process. The chemical compound used at the core of the CCS process (amine) is affected by heat and by fly ash (coal particulates). This meant the amine and the complex chemistry behind it needed to be analyzed and fixes identified. A permanent solution is also being worked on.”

- A. Please explain whether and to what extent EPA has directly validated that the CCS process has been (a) “operating successfully” and (b) that issues concerning chemistry of the capture process have been adequately resolved.
 - B. Explain how EPA's due diligence concerning ongoing technical and economic issues surrounding CCS operations at electric power generating units have been analyzed and documented by the agency.
6. You stated during your testimony that EPA consulted with and obtained assurances from equipment vendors or contractors that a coal-fired power plant could be built with CCS technologies to meet the new standards. In addition, in response to questions for the record concerning the technical and economical readiness of CCS following the Committee's March 22, 2016 budget hearing with Administrator McCarthy, EPA references “a discussion

in the final rule of commercial vendors who offer carbon capture technology and provide performance guarantees.”

- A. Has EPA specifically confirmed that commercial vendors will offer CCS technology with performance guarantees for utility scale electric power generating units?
 - B. If yes, which equipment vendor or contractor(s) did EPA consult with and obtain such guarantees?
7. In its final Section 111(b) rule setting carbon dioxide standards for new coal-fired power plants issued last year, EPA cited two commercial scale power plant CCS projects in the United States, including the Kemper Project and Texas Clean Energy Project, and a small CCS power plant project in Canada, known as Boundary Dam. Since the rule was finalized these projects have continued to be subject to significant controversy, including with regard to technological and cost issues.
- A. What is the current status of the Texas Clean Energy Project?
 - B. Is EPA continually monitoring the technological and cost issues relating to the development and deployment of CCS for the power sector?
 - C. If yes, please explain what EPA is doing to monitor the technological and economic feasibility of CCS for the power sector?
 - D. Is EPA updating its cost estimates for CCS for the power sector? If yes, what is EPA’s updated cost estimate for CCS technologies for a new coal-fired electric generating unit?
8. When EPA finalized its 111(d) rule for fossil fuel-fired electric generating units, referred to by the agency as the “Clean Power Plan,” the agency also proposed “Model Trading Rules.” According to its website, EPA plans to finalize the model trading rules this August.
- A. Is that accurate?
 - B. Does EPA plan to finalize the model trading rules before the end of the Administration?
 - C. If EPA finalizes the model trading rules, would that mean a state or affected party that wants to challenge the rules would have to take legal action within 60 days, or forego that right?
9. Under Section 109(d)(2)(c)(iv) of the Clean Air Act, the Clean Air Scientific Advisory Committee (CASAC) is directed to advise EPA of “any adverse public health, welfare, social, economic or energy effects which may result from various strategies for attainment of national ambient air quality standards.” In Questions for the Record following the Energy and Commerce Committee’s March 22, 2016 hearing regarding the EPA Fiscal Year 2017 Budget, we asked why EPA had not requested CASAC provide advice on adverse effects relating to implementing national ambient air quality standards (NAAQS). In response, EPA stated that Section 109(d)(2)(c)(iv) “does not require that CASAC provide this advice

as part of the five year review cycle. Moreover, when the Supreme Court in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), held that the EPA could not consider implementation and other costs in setting the NAAQS, the Court further held that any CASAC advice related to costs of implementation . . . would not be relevant to the EPA's review of the NAAQS."

- A. Section 109(d)(2)(c)(iv) does not refer solely to costs, but also to "adverse public health, welfare, social . . . or energy effects."
 - i. Does EPA maintain adverse public health effects should not be considered in setting or reviewing NAAQS?
 - ii. Does EPA maintain adverse welfare effects should not be considered in setting or reviewing NAAQS?
 - iii. Does EPA maintain adverse welfare, social or energy effects should not be considered or is not relevant in setting or reviewing NAAQS?
 - B. For any current or planned CASAC review of criteria pollutants, will EPA request CASAC consider potential adverse effects in their review, as required by the statute?
 - C. Is CASAC considering adverse effects of implementing any of the existing NAAQS?
 - D. Does EPA maintain that Section 109(d)(2)(c)(iv) is an optional provision of the CAA and does not impose any obligations on the agency?
10. We understand EPA recently has made amendments to its Boiler MACT and other air toxics rules to remove the affirmative defense to civil penalties for violations caused by malfunctions.
- A. Is that correct?
 - B. Is it correct that EPA plans to exercise "case-by-case enforcement discretion" whenever a source may have failed to meet air toxics standards as a result of a malfunction?
 - C. Does this mean every time there is a malfunction a facility could be subject to an enforcement action by EPA or citizen suit?
 - D. Is it correct that Congress recognized that malfunctions do occur in the real world and has EPA historically recognized this as well, and not treated malfunctions as enforcement triggers?
 - E. It appears this new case-by-case discretion increases uncertainty about litigation and enforcement risks pertaining to malfunctions. Explain why EPA chose not to promulgate standards that account for malfunctions and so help avoid increased enforcement and litigation uncertainty?

11. In the EPA's 2012 standards for the oil and gas sector, EPA expanded the source category list to include any oil and gas operation and equipment that were not previously regulated.
 - A. What was the rationale for expanding the sector without an endangerment finding?
 - B. Is this an approach EPA believes it can take for the more than 70 other source categories regulated under the New Source Performance Standards Program?
12. EPA is beginning to pursue regulations targeting hundreds of thousands of existing oil and natural gas wells currently regulated by states.
 - A. Is EPA planning to propose or finalize regulations before the end of the Administration?
 - B. Is EPA currently considering setting individual state methane targets or budgets similar to what the agency has done in the Clean Power Plan for the power sector?
 - C. Is EPA currently developing a proposed "federal plan" that would apply to existing sources in the oil and gas sector similar to what has been proposed for the Clean Power Plan?
13. Concerning Section 321 of the Clean Air Act, which provides: "The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of [the Clean Air Act] and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement."
 - A. In 1991, Energy and Commerce Committee Chairman Dingell made requests to EPA concerning at least two specific instances the Committee believed required EPA investigations pursuant to Section 321. One incident concerned the shutdown of Bethlehem Steel's Sparrows Point facility and another involved furniture makers in California. Please explain the disposition of these cases/requests and describe any EPA findings.
 - B. Please explain how EPA gathered information concerning these cases and the basis for its resulting decisions.
 - C. Please explain EPA's coordination with the Department of Labor and Department of Commerce, which also were notified of the worker protection provisions and the requirement for investigation.
14. Describe all cases that EPA has investigated pursuant to Section 321, and EPA's procedures for investigating those cases.

The Honorable Bill Flores

1. In the “Clean Power Plan,” EPA maintains Section 111(d) of the Clean Air Act authorizes the agency to set emissions limits for power plants based not on what is achievable by individual electric generating units, but by going “beyond the fence.” EPA effectively redefines the source being regulated as being not the actual unit, but instead taking a “system wide” approach and looking at state electricity resource planning overall.
 - A. Is EPA considering a similar system wide approach for the oil and gas sector?
 - B. Can you rule out such an approach, categorically?
2. Under the “Clean Power Plan,” EPA has also maintained that it can set carbon dioxide targets for each state’s electricity sector which effectively can only be met by participating in state, regional, or federal emissions trading programs to mitigate the huge costs of the resources shifting.
 - A. Is EPA considering a similar state targets approach for each state’s oil and gas sector?
 - B. Can you rule out a regulatory cap-and-trade approach categorically for the oil and gas sector?
 - C. Can you rule out categorically EPA requiring changes to a state’s oil and gas resource planning?
3. The EPA’s unprecedented 111(d) regulations for the electricity sector have been stayed by the U.S. Supreme Court, in response to legal challenges brought by 27 states
 - A. Given many of the same issues relating to the scope of the agency’s authority are likely to be raised, would it make sense to determine the legality of the “Clean Power Plan” before moving forward with 111(d) rules for the oil and gas sector?

The Honorable Markwayne Mullin

1. Ms. McCabe, Office of Management and Budget (OMB) Circular A-4 guides Federal Agencies on the development of the Regulatory Impact Analysis that is required to accompany agency rules. Circular A-4 instructs agencies to include discount rates of 3 and 7 percent when evaluating the cost and benefits of its rules. This permits a comparison of the respective present values. However, both the Social Cost of Carbon estimates and the Social Cost of Methane estimates, fail to use the 7 percent discount rate. Is the failure to use the 7 percent discount rate in both the Social Cost of Carbon estimates and the Social Cost of Methane estimates because at that discount rate, the Social Cost of Carbon becomes negative? The Social Cost of Methane drops as well? For the Social Cost of Carbon a 7 percent discount rate actually reflects a benefit to the emission of carbon dioxide. Has the Agency ever run either the Social Cost of Carbon or Social Cost of Methane estimates using the proper discount rate of 7%?

2. OMB Circular A-4 directs Federal Agencies to evaluate the costs and benefits that accrue to citizens and residents of the United States. While Circular A-4 specifies that an evaluation of global effects, when undertaken, is to be reported separately from domestic costs and benefits, your Agency in the final methane rule calculated only the global benefits from a reduction in methane emissions while ignoring domestic calculations for costs/benefits. Why did the Agency fail to provide such information to the citizens and residents of the United States? While your position may be that the global benefits of methane emissions reductions outweigh the domestic costs – the citizens and residents of the United States have no analysis upon which to make that determination?
3. In July 2015, the Office of Management & Budget, after being forced to put out the Social Cost of Carbon estimates for public comment, requested the National Academies of Science review the Social Cost of Carbon estimates. Shortly after the commencement of the NAS review, EPA, without appropriate peer-review and separate public notice and comment, utilized Social Cost of Methane estimates in justifying the costs and benefits of the September 2015 proposed and recently finalized rules addressing methane emissions from new oil and gas wells and operations. With the inherent problems associated with the Social Cost of Carbon estimates, as developed by an executive branch interagency working group, why would EPA move forward with the Social Cost of Methane estimates in such a unilateral fashion?
4. Did you reach out to OMB during your Agency's development of the Social Cost of Methane estimates to request a convening of an Interagency Working Group on the Social Cost of Methane?
5. In the finalized rule for the oil and gas sector, the accompanying Regulatory Impact Analysis notes that quantification of benefits from reductions in hazardous air pollutants, ozone and particulate matter is not possible for the rule and therefore all the monetized benefits from the rule are attributable to the Social Cost of Methane estimates, does that mean without the EPA's Social Cost of Methane estimates the rule would result in only costs?
6. Ms. McCabe, it is my understanding that the same three integrated assessment models are used to measure the Social Cost of Carbon and the Social Cost of Methane. It is well understood that what goes into a model dictates what comes out of a model. Is it the case that EPA by choosing discount rates of 2.5%, 3.0% and 5.0% and ignoring the 7% discount as required by OMB guidance made an arbitrary decision so that the resulting estimates would be greater than the expected costs of greenhouse gas related regulations, including the Clean Power Plan and the recent NSPS for methane for the oil and gas sector?
7. Ms. McCabe, was the decision to ignore the Executive Branch's Office of Management and Budget Circular A-4 guidance in regard to the use of a 7% discount rate for the Social Cost of Methane estimates based on economics or policy?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Joe Barton

1. The EPA has issued 16 major rules affecting the U.S. Energy and Industrial sectors (appendix 2 of majority memorandum for July 6, 2016, Subcommittee on Energy and Power hearing). These include, among others, the Mercury and Air Toxics (MATS) Rule, Cross State Air Pollution Rule, air rules for the oil and gas industry issued in 2012 and 2016, Boiler MACT, Cement MACT, Brick MACT, the Ozone NAAQS, SO₂ NAAQS, and PM 2.5 NAAQS.
 - A. Using the 2008 as the baseline, please identify how much each of these rules has improved relevant air quality measures in the United States?
 - B. Please include the metrics the EPA uses to track the impact of each of these rules on air quality in the United States.

The Honorable Billy Long

1. Since 2009, the EPA has published approximately 3,900 final rules. Roughly, how many of these rules have been considered economically significant, meaning they have an annual effect on the economy of \$100 million or more?

The Honorable Robert Latta

1. In the “Clean Power Plan” for existing fossil fuel-fired electric generating units, EPA contends Section 111(d) of the Clean Air Act authorizes the agency to set standards that systematically compel a shift away from fossil fuels to generate electricity to renewable energy and efficiency programs.
 - A. Are any of the 70 source categories currently regulated under Section 111 of the Clean Air Act potentially subject to greenhouse gas regulation under Section 111(b) and/or Section 111(d) going forward?
 - B. Can you provide a list of emissions sources and industries regulated under Section 111 that would be exempt from greenhouse gas regulation under Section 111(b) or 111(d) going forward?