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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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STAFF DIRECTOR

September 29, 2011

The Honorable Gene L. Dodaro
Comptroller General of the United States
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

The House Committee on Oversight and Government Reform requests assistance from the U.S. Government Accountability Office (GAO) to conduct oversight into the quality of regulatory analysis conducted by the U.S. Environmental Protection Agency (EPA). The Committee specifically requests that GAO evaluate EPA's analysis of the economic implications of completed rulemakings under the Clean Air Act (CAA), the Clean Water Act (CWA), and other relevant statutes. As required by both statute and executive order, agencies must analyze the impacts of economically significant rules—those that would affect the economy by \$100 million or more each year—unless otherwise prohibited by law. To this end, the Office of Management and Budget (OMB) has developed guidance and best practices in interpreting the Data Quality Act for agencies to follow in order to perform the proper analysis of the economic effects of agency rulemaking.¹ Moreover, the White House has been clear about the necessity of performing specific evaluations of the impacts of regulations. For example, Executive Orders (E.O.) 12866 and 13563 state the requirements that agencies must follow in performing regulatory analysis and OMB Circular A-4 exists to assist agencies complying with E.O. 12866 by defining good regulatory analysis.² The White House even specifically called for enhanced review of the regulatory impacts to small businesses through a Presidential Memoranda entitled “Regulatory Flexibility, Small Business, and Job Creation” (Small Business Memorandum).³ Through oversight performed by the Committee, it appears that in some cases EPA has failed to follow these regulatory guidelines.

¹ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, Office of Management and Budget *available at* http://www.whitehouse.gov/omb/fedreg_reproducible.

² Circular A-4 *available at* http://www.whitehouse.gov/omb/circulars_a004_a-4/.

³ Presidential Memorandum, Regulatory Flexibility, Small Business, and Job Creation, Jan. 18, 2011, *available at* <http://www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-flexibility-small-business-and-job-cre>.

The Committee has held numerous hearings on EPA regulations, learning firsthand of the inconsistencies of EPA's economic analysis of regulations. For example, at the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending hearing entitled "Lights Out: How EPA Regulations Threaten Affordable Power and Job Creation," EPA Deputy Administrator Bob Perciasepe explained the analyses of regulations performed for the Cross State Air Pollution Rule (CSAPR), Utility Maximum Achievable Control Technology (MACT) rule, and Coal Combustion Residuals (CCR) rule.⁴ The Committee found a number of inconsistencies in EPA's analyses of these rules. For example, EPA declined to do a jobs impact analysis for CCR, despite the fact that it completed a jobs analysis for other rules.⁵ Furthermore, EPA's cost of compliance estimates for all of these rules were significantly lower than other analyses conducted by other sources that work closely with the utility industry. In addition, the Committee has also raised similar concerns with regard to the Nutrient Water Quality Standards and Corporate Average Fuel Economy (CAFE) Standards.⁶ The inconsistent nature of EPA's analyses and their results raise questions about the processes used by EPA in its economic analyses of regulations.

Prior GAO work has identified the strengths and limitations of the economic analysis for agency rulemakings under the CAA and other statutes.⁷ Based on this work, the Committee asks GAO to provide an update on EPA's efforts in this area. The Committee is particularly interested in an independent and objective analysis of the quality of EPA's economic analysis, with a focus on underlying assumptions and models, consistency with applicable guidance, the characterization of uncertainties, and the transparency of the analysis. Specifically, we request that GAO report on:

1. The quality of the economic analyses that EPA used to support recent rulemakings, including the extent to which EPA has followed relevant directives, such as guidance and best practices set forth by OMB under the Data Quality Act, Circular A-4 defining good regulatory analysis for complying with E.O. 12866, and the White House's directives in E.O. 13563 and the Small Business Memorandum; and
2. The extent to which EPA's economic analyses has informed EPA's actions in developing the associated regulations, including the extent to which EPA has followed the relevant directives listed above.

⁴ *Lights Out: How EPA Regulations Threaten Affordable Power and Job Creation: Hearing Before the Subcomm. On Regulatory Affairs, Stimulus Oversight, and Gov't Spending of the H. Comm. On Oversight and Gov't Reform*, 112th Cong. (2011) (statement of Bob Perciasepe, Deputy Assistant Administrator, U.S. EPA).

⁵ Environmental Protection Agency, *Regulatory Impact Analysis for EPA's Proposed RCRA Regulation of Coal Combustion Residues (CCR) Generated by the Electric Utility Industry* (Apr. 30, 2010).

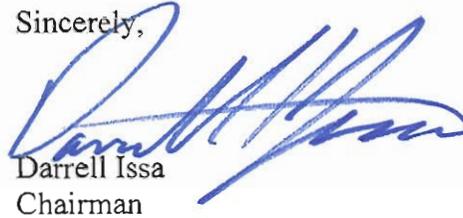
⁶ Staff Meeting with U.S. GAO.

⁷ Clean Air Act, 42 U.S.C. §7401 (2011).

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I respectfully ask that you please coordinate with Joseph Brazauskas and Kristina Moore of the Committee Staff in responding to this request. If you have any questions please contact them at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", is written over a light blue rectangular background. The signature is fluid and cursive.

Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member