

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

July 9, 2013

The Honorable Robert Perciasepe  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Acting Administrator Perciasepe:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce seeks documents and information relating to the scope of economic impact analyses prepared by the Environmental Protection Agency (EPA) for recent major rules that may have significant economy-wide impacts.

Many economically significant Clean Air Act regulations issued by EPA in recent years affect far more than just the directly regulated industry sectors. The regulations' compliance costs include price effects and other costs that ripple through the U.S. economy. Yet EPA does not typically report these costs to the wider economy in its public Regulatory Impact Analyses (RIAs). Instead, EPA approaches cost estimation in a manner that restricts analysis to limited sectors, even though it has developed economy-wide modeling capability that could provide fuller information about the price and employment impacts of its rules.

Based on a review of agency RIAs, it appears the agency has turned away from using the economy-wide modeling tools it possesses in its major recent Clean Air Act rulemakings, even for those rulemakings that clearly pose economy-wide cost impacts. In one instance in 2011, EPA's RIA for its final Cross-State Air Pollution Rule discarded the agency's economy-wide modeling used in the RIA for the proposed rule. When the agency attempted to estimate labor and worker income impacts in the final rule, the agency deployed a method that focused solely on sector-specific compliance costs. Absent use of economy-wide modeling, EPA failed to report negative wage and labor impacts from the ripple effects of the rule, whereas an analysis of those costs using economy-wide modeling estimated a negative impact on worker incomes equivalent to about 30,000 jobs. Because EPA has repeated this pattern in multiple recent Clean Air Act rulemakings, the potential worker income losses it has failed to identify for the public is much greater.<sup>1</sup>

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<sup>1</sup> See Prepared Statement of Anne E. Smith, Ph.D., Hearing before the Subcommittee on Energy and Power, April 12, 2013.

In addition to concerns about EPA's failure to report fuller economic impacts of its rules, we have concerns about the jobs impacts the agency actually does report. EPA has used a simplistic formula to develop its sector-specific cost estimates in a number of recent rulemakings in which the estimated compliance costs are multiplied by a fixed estimate of "jobs increased per dollar of compliance spending." That fixed estimate was taken from a paper that considered totally different regulations, with no analysis of productivity impacts reflective of the new rule under consideration. According to testimony received by the Subcommittee on Energy and Power in April 2013, this formula "will always conclude that the new regulation will create jobs."<sup>2</sup>

When Representative Bill Johnson questioned you at a Committee hearing on May 16, 2012, about EPA's failure to conduct the analyses needed for fuller understanding of regulatory costs, you acknowledged that EPA is not currently disclosing the full economic impact of its major air rules.<sup>3</sup> Given concerns about the current methods EPA chooses to use, which effectively deny the public accurate estimates of the economic impact of rules' compliance costs, we seek to examine EPA's planning, performance, and decision-making surrounding the use of its economic cost estimates. Accordingly, we ask that you provide responsive documents and written responses to the following by July 24, 2013.

1. Provide all documents, including but not limited to e-mail and other communications, relating to comments received by EPA from the public, intergovernmental review, and internal and external peer review concerning EPA's use of cost estimation methodology generally, and specifically concerning the following: (a) computable general equilibrium (CGE) modeling, (b) multi-market modeling, and (c) the study by Morgenstern, Pizer, and Shih (2002) in RIAs for all major Clean Air Act rules completed since June 1, 2010.
2. Provide all documents, including but not limited to e-mail and other communications, relating to internal deliberations concerning EPA's use of cost estimation methodology generally, and specifically concerning the following: (a) CGE modeling, (b) multi-market modeling, and (c) the study by Morgenstern, Pizer, and Shih (2002) in RIAs for all major Clean Air Act rules completed since June 1, 2010, and including particularly records relating to the decision to drop the CGE analysis in the final 2011 RIA for the Cross-State Air Pollution Rule.
3. Identify all contractors that performed any economic impact modeling for the agency for all major proposed and final Clean Air Act rules completed since June 1, 2010, and provide all documents relating or referring to the results of the work provided to the agency and the scope of work.
4. List and describe in detail all specific work, initiatives, or other projects EPA has undertaken to improve its economic cost analyses since January 2009. The list should also include:
  - a. The resources obligated and expended by the agency on these projects.
  - b. The offices, programs, and contractors conducting the projects.
  - c. How this work has been applied to RIAs for major Clean Air Act rules completed since June 1, 2010.

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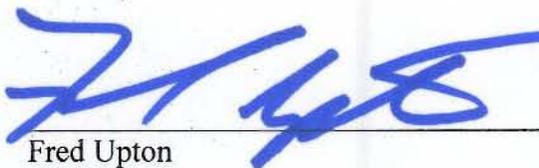
<sup>2</sup> Id.

<sup>3</sup> See Joint Subcommittee on Energy and Power and Subcommittee on Environment and the Economy hearing, May 16, 2013.

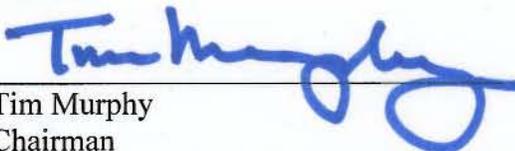
- d. How this work specifically meets any agency goals for the deployment of economic cost analyses and economy-wide cost estimates.

We appreciate your prompt attention to this request. Instructions for responding to the Committee's document requests are included as an attachment to this letter. Should you have any questions, please contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

Sincerely,



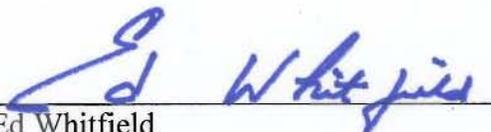
Fred Upton  
Chairman



Tim Murphy  
Chairman  
Subcommittee on Oversight and Investigations



Joe Barton  
Chairman Emeritus



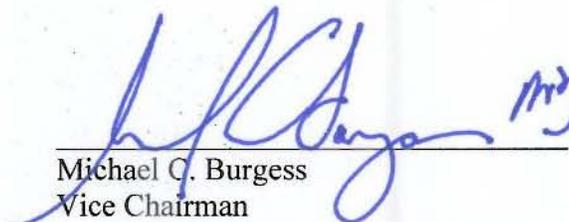
Ed Whitfield  
Chairman  
Subcommittee on Energy and Power



Marsha Blackburn  
Vice Chairman



John Shimkus  
Chairman  
Subcommittee on Environment and Economy



Michael C. Burgess  
Vice Chairman  
Subcommittee on Oversight and Investigations

Attachment

Letter to the Honorable Robert Perciasepe

Page 4

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations

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

The Honorable Paul Tonko, Ranking Member  
Subcommittee on Environment and Economy

## RESPONDING TO COMMITTEE DOCUMENT REQUESTS

*In responding to the document request, please apply the instructions and definitions set forth below:*

### INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

#### DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.