

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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December 13, 2012

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 6101A
Washington, D.C. 20460

The Honorable John P. Holdren
Director
Office of Science and Technology Policy
Eisenhower Executive Office Building
1650 Pennsylvania Avenue
Washington, DC 20504

Mr. Boris Bershteyn
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, N.W.
Washington, DC 20403

Dear Administrator Jackson, Dr. Holdren, and Acting Administrator Bershteyn,

As the White House and the Environmental Protection Agency (EPA) aim to respond to a court-imposed December 14th deadline for release of the final National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM_{2.5}), we write to reiterate concerns that this important rule is being hastily considered and is based on scientific processes and data that have not been made available for public review. As you know, Members of the Science, Space, and Technology Committee have repeatedly requested release of the scientific data that EPA uses to justify alleged benefits of this rule (as well as the majority of EPA's Clean Air Act benefit claims for non-PM_{2.5} rules). Multiple senior Obama Administration officials have promised to ensure release of this data but have yet to fulfill such commitments, raising further questions regarding the President's pledge of openness and transparency.

Prior to finalizing NAAQS for PM_{2.5}, which could destroy countless jobs and subject large portions of the country to nonattainment status under the Clean Air Act, it is essential that EPA and the White House make the underlying data linking PM_{2.5} and mortality publicly available in a manner sufficient for analysis by independent scientists and researchers. This is especially important as EPA's action will subject taxpayers who funded this research to costly regulatory consequences without having permitted public review or scrutiny of the data and information.

Federally-funded analyses of two well-known data sets – the “Cancer Prevention Study” and the “Harvard Six Cities Study” – provide the lynchpin to virtually all of EPA's Clean Air Act claims. For example:

- Nearly all of the rules adopted by EPA to implement the Clean Air Act since 2003, even those that do not directly regulate fine particulate matter, have been justified on the basis of estimated monetized benefits from reducing ambient PM_{2.5}.¹
- The Regulatory Impact Analysis that accompanied the proposed PM_{2.5} NAAQS in June acknowledged that **98 percent** of the total of these claimed monetized benefits of lowering the standard is derived from these two data sets.²
- An analysis of these two data sets is the only source for EPA claims of \$1.7 trillion, or 85 percent, of the \$2.0 trillion in total benefits from the Clean Air Act between 1990 to 2020.³ These undisclosed data are also the origin of EPA's frequent claim that Clean Air Act benefits exceed the costs by a 30-to-1 ratio.
- Not only does EPA rely on these data sets for its Clean Air Act claims, this science also provides the basis for a disproportionate share of overall federal regulatory benefit claims. In its *Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, the White House Office of Information and Regulatory Affairs (OIRA) notes that EPA rules represent 60 to 81 percent of the estimated benefits for all regulations across the entire federal government. The report further emphasizes that 97 to 98 percent of EPA's claimed benefits come from air quality rules, and that “the large estimated benefits of EPA rules are mostly attributable to the reduction in public exposure to a single air pollutant: fine particulate matter.”⁴ Put succinctly, **it is likely that a majority of the benefits claimed from all federal regulations are grounded in data sets that have never been made available to the public.**

¹ <http://science.house.gov/sites/repUBLICANS.science.house.gov/files/documents/hearings/Sunstein%20Letter.pdf>.

² EPA, *Regulatory Impact Analysis for the Proposed Revisions to the National Ambient Air Quality Standards for Particulate Matter*, June 2012, http://www.epa.gov/ttnecas1/regdata/RIAs/PMRIACombinedFile_Bookmarked.pdf, ES-9.

³ EPA, *The Benefits and Costs of the Clean Air Act from 1990 to 2020*, March 2011, <http://www.epa.gov/oar/sect812/feb11/fullreport.pdf>, 7-3 to 7-5.

⁴ OIRA, *Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, March 2012, http://www.whitehouse.gov/sites/default/files/omb/oira/draft_2012_cost_benefit_report.pdf, pg. 15.

For more than a year, EPA and the White House have declined repeated requests from Science, Space, and Technology Committee members to make the underlying data from these analyses publicly-available at a level sufficient for independent re-analysis⁵:

- In a September 2011 hearing on the Cross-State Air Pollution Rule, EPA Assistant Administrator for Air and Radiation Gina McCarthy committed to provide all of the underlying PM_{2.5} death and injury data in order to be independently reviewed.⁶
- In follow-up correspondence on November 30, 2011, Ms. McCarthy stated that she would take action "...as soon as possible to provide you with any data and analysis produced with EPA funds..."⁷
- On December 22, 2011, in response to a request to make this data available, OIRA Administrator Cass Sunstein wrote that "OIRA takes... Executive Order [13563] very seriously and strives to make such information available whenever possible."⁸
- During a February 2012 budget hearing, the President's Science Advisor and Director of the White House Office of Science and Technology Policy, Dr. Holdren committed to providing this information and stated that he would "start working on it immediately."⁹

Similarly, Administration officials have repeatedly supported making data relied upon for regulatory decisions publicly-available:

- When asked about this specific Clean Air Act example, Dr. Holdren stated that "...absolutely the data on which regulatory decisions and other decisions are based should be made available to the Committee and should be made public..." during a June 20, 2012 hearing.¹⁰
- The then-Chair of EPA's Science Advisory Board (SAB), Dr. Deborah Swackhamer, agreed in February 2012 testimony that "data used to justify regulation should be made publicly available" without any restrictions and that "all data that goes into making conclusions in a scientific study should be made available." Similarly, in follow-up questions for the record, Dr. Swackhamer said: "The SAB recommends that literature and data used by EPA be peer-reviewed and made available to the public."¹¹

⁵ Information provided by EPA in June of 2012 has been determined by air quality experts to be inadequate for re-analysis.

⁶ *Out of Thin Air: EPA's Cross-State Air Pollution Rule*, Hearing before the Committee on Science, Space, and Technology, September 15, 2011, <http://www.gpo.gov/fdsys/pkg/CHRG-112hrg70585/pdf/CHRG-112hrg70585.pdf>, pg. 58-60.

⁷ <http://science.house.gov/epa-assistant-administrator-mccarthy-chairman-harris>.

⁸ <http://science.house.gov/letter-cass-sunstein-chairman-harris>.

⁹ *An Overview of the Administration's Federal Research and Development Budget for Fiscal Year 2013*, Hearing before the Committee on Science, Space, and Technology, February 17, 2012, <http://science.house.gov/hearing/full-committee-hearing-overview-administration%E2%80%99s-federal-research-and-development-budget>.

¹⁰ *The Office of Science and Technology Policy: Examining Priorities and Effectiveness of the Nation's Science Policies*, Hearing before the Committee on Science, Space, and Technology, <http://science.house.gov/hearing/full-committee-hearing-examining-priorities-and-effectiveness-nation%E2%80%99s-science-policies>.

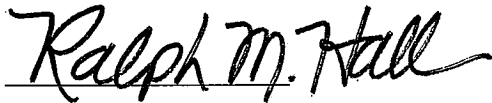
¹¹ *Fostering Quality Science at EPA: Perspectives on Common Sense Reform – Day II*, Hearing before the Subcommittee on Energy & Environment, February 3, 2012, <http://science.house.gov/hearing/energy-and-environment-subcommittee-hearing-fostering-quality-science-epa-perspectives-0>.

- Dr. Kenneth Olden, the Director of EPA's National Center for Environmental Assessment, which develops the science for NAAQS decisions, was a member of the Bipartisan Policy Center's Science for Policy Project, which recommended in 2009 that: "Studies used in the formulation of regulation should be subject to data access requirements equivalent under the Data Access Act (Shelby Amendment) and its implementing circular regardless of who funded the study."¹²

The refusal by EPA and the White House to provide this underlying data in a manner sufficient for independent re-analysis is clearly at odds with the President's rhetoric about transparency, as well as the transparency provisions contained in EPA's Scientific Integrity Policy, Public Law 105-277, and Executive Order 13563. As EPA's *Peer Review Handbook* recognizes, public access and transparency are essential to peer review and credible scientific conclusions. Accordingly, and in light of the importance of these data sets to EPA's final PM_{2.5} NAAQS as well as to the credibility of the broader federal regulatory enterprise, we call on EPA and the White House to immediately work to make these data sets publicly-available, and ensure that future federal regulatory decisions are based on transparent and publicly-available scientific data.

If you have any questions about this request, please contact Mr. Clint Woods of the Subcommittee on Energy and Environment Staff at 202-225-8844.

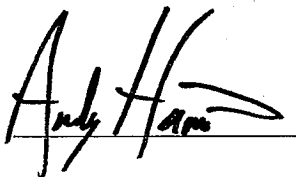
Sincerely,



Rep. Ralph Hall
Chairman
Committee on Science, Space,
and Technology



Rep. Lamar Smith
Committee on Science, Space,
and Technology



Rep. Andy Harris M.D.
Chairman
Subcommittee on Energy
& Environment

¹² Bipartisan Policy Center Science for Policy Project, Improving the Use of Science in Regulatory Policy, August 5, 2009, <http://bipartisanpolicy.org/sites/default/files/BPC%20Science%20Report%20fml.pdf>.