

United States Senate
WASHINGTON, DC 20510

October 8, 2015

The Honorable Shaun Donovan
Director
The Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Director Donovan:

Your office has yet to publish its statutorily required 2015 Draft Report to Congress on the Benefits and Costs of Federal Regulations. Under section 624 of Public Law 106-554, the Director of the Office of Management and Budget (OMB) is required to submit to Congress, along with the President's Budget Request, an accounting statement and report of the annual costs and benefits of federal regulations.¹ This section, known as the "Regulatory Right-to-Know Act," is intended to increase government accountability and improve the quality of federal regulatory programs and rules.² The statute also requires that the statement and report be subject to public notice and comment as well as external peer review.³ In order to meet these obligations and issue a final report in time for consideration along with the President's budget request, OMB historically releases a draft report in March or April of each year.⁴ However, the fiscal year has ended and no draft has been made available for public review.

This report is not only a statutory mandate, it also provides critical information to the public and helps Congress fulfill its oversight responsibilities. As you are aware, the report is the only government-issued document that discloses the overall annual costs and benefits of federal regulations. Moreover, OMB has acknowledged the report helps "to improve our knowledge about the effects of regulation on the public, the economy, and the American people."⁵ It is therefore imperative that Congress promptly receive the 2015 report as we consider new appropriations for federal funding.

Publication of the report is of particular interest to the Senate Committee on Environment and Public Works (EPW) as Environmental Protection Agency (EPA) regulations were the most costly and included the greatest purported benefits among all the federal agencies reviewed in the

¹ Pub. L. No. 106-554 §624.

² See H. Rept. 106-168 (1999).

³ Pub. L. No. 106-554 §624.

⁴ See OIRA Reports to Congress, available at https://www.whitehouse.gov/omb/inforeg_regpol_reports_congress (last visited Sept. 23, 2015).

⁵ See H. Rept. 106-168 (1999), p. 8, available at <https://www.congress.gov/106/crpt/hrpt168/CRPT-106hrpt168.pdf> (quoting "Report to Congress on the Costs and Benefits of Federal Regulations: 1998)."

2014 Report to Congress.⁶ Notably, the 2014 report stated, “[i]t should be clear that across the Federal government, the rules with the highest estimated benefits as well as the highest estimated costs, by far, come from the Environmental Protection Agency and, in particular, its Office of Air and Radiation.”⁷ The 2014 report also explained that “the large estimated benefits of EPA rules issued pursuant to the Clean Air Act are mostly attributed to the reduction in public exposure to a single air pollutant: fine particulate matter (referred to henceforth as PM).”⁸ Most of these benefits are “associated with the ancillary reductions in PM that come from reducing emission of hazardous air pollutants,” otherwise referred to as “co-benefits.”⁹ Indeed, EPA’s practice of accounting PM co-benefits has been subject of much debate,¹⁰ and since the 2014 report EPA has issued new air regulations claiming even more benefits from reduced PM. For instance, sixty percent of the benefits EPA claimed in its so-called Clean Power Plan aimed at reducing carbon are instead attributed to PM reductions.¹¹ Accordingly, an updated report is necessary to keep the Committee fully informed of the regulatory actions coming out of the EPA, including the Agency’s aggregate PM co-benefit estimates.

The Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Regulatory Affairs and Federal Management (RAFM) is likewise concerned with OMB’s failure to timely publish its draft report. As the Subcommittee tasked with oversight of the federal regulatory process, we must track the magnitude and effects of today’s ever-increasing regulatory burden. Not having the information in the draft report imperils our ability to conduct this oversight, and further delay of the 2015 draft report is unacceptable.

While a review of the Federal Register reveals that in 2015 EPA has already finalized 18 regulations with corresponding \$24.1 billion in costs,¹² the Administration must update its report to Congress to ensure accuracy and comprehensive information on federal regulations across the federal government. The final 2014 report only covered regulations up to September 30, 2013.¹³ This leaves two years for which Congress does not have critical information from the White House regarding the benefits and costs of federal regulations.

Overall, we are disappointed your office is ignoring a statutory mandate to publish the report and are concerned the delay may be an effort to withhold key information on the costs and benefits of its regulatory agenda from the public. To demonstrate that this is not your intent, we

⁶ OFFICE OF MGMT. & BUDGET, 2014 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES (2014), available at https://www.whitehouse.gov/sites/default/files/omb/inforeg/2014_cb/2014-cost-benefit-report.pdf.

⁷ *Id.* at 13.

⁸ *Id.* at 14.

⁹ *Id.*

¹⁰ See Amanda Reilly, *AIR POLLUTION: Battle over PEA 'co-benefits' rages after mercury ruling*, E&E NEWS, July 1, 2015, <http://www.eenews.net/stories/1060021172>.

¹¹ U.S. ENV'T'L PROT. AGENCY, REGULATORY IMPACT ANALYSIS FOR THE CLEAN POWER PLAN FINAL RULE, EPA-452/R-15-003 (Aug. 2015), available at <http://www3.epa.gov/airquality/cpp/cpp-final-rule-ria.pdf>.

¹² See Regulation Rodeo, American Action Forum, available at <https://regrodeo.com/?year%5B0%5D=2015&agency%5B0%5D=Environmental%2BProtection%2BAgency> (last visited Oct. 7, 2015).

¹³ See OFFICE OF MGMT & BUDGET, OIRA REPORTS TO CONGRESS, available at https://www.whitehouse.gov/omb/inforeg_regpol_reports_congress/ (last visited Sept. 30, 2015).

Director Donovan
October 8, 2015
Page 3 of 3

request that your office release a draft statement and report for public comment as soon as possible and schedule a briefing with EPW Committee and RAFM Subcommittee majority staff on the reason for delay, the process used in compiling a draft report, and plans for finalizing the report.

Thank you for your attention to this important matter. If your staff has any questions with this request, please contact the EPW Committee majority staff at (202) 224-6176 or the RAFM Subcommittee majority staff at (202) 224-2862.

Sincerely,



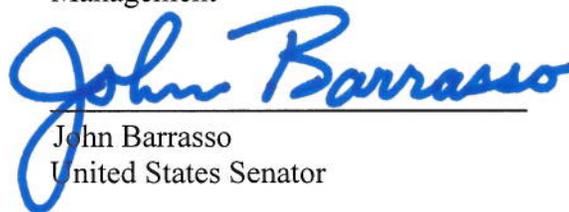
James M. Inhofe
Chairman
Senate Environment and Public Works
Committee



James Lankford
Chairman
Senate Homeland Security and
Government Affairs Subcommittee
on Regulatory Affairs and Federal
Management



David Vitter
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John Barrasso
United States Senator



Jeff Sessions
United States Senator



Deb Fischer
United States Senator



M. Michael Rounds
Chairman
Senate Environment and Public Works
Subcommittee on Superfund, Waste
Management and Regulatory Affairs

cc: Howard Shelanski, Administrator, Office of Information and Regulatory Affairs