Congress of the United States
Washington, DC 20515

January 13, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Jackson:

We respectfully request the withdrawal of the Light Duty Vehicle Rule and the Greenhouse Gas Tailoring Rule until the Environmental Protection Agency (EPA) conducts the economic analysis required under the Regulatory Flexibility Act (RFA). Such an analysis was directed by the Office of Advocacy within the Small Business Administration (SBA), in its December 23, 2009 letter to EPA.[1] We also strongly urge EPA to follow the guidance of the SBA and "reconsider [the Endangerment] finding and or delay the effective date of the finding in order to allow the agency to conduct an Small Business Advocacy Review (SBAR) Panel on endangerment and other GHG rules."[2]

With unemployment rates hovering above 10%, it is unacceptable that EPA failed to evaluate the impact of greenhouse gas (GHG) regulations on small business. As you know, small business is the key to economic growth and job creation. In the past 15 years, small business owners were responsible for 64% of all job creation. Federal agencies have a legal responsibility to evaluate and minimize the economic burden imposed by their regulatory actions, and EPA is no exception.

The RFA requires federal agencies to consider the effects of their regulatory actions on small businesses and other small entities and to minimize any undue disproportionate burden.[3] The Office of Advocacy, the agency vested with the responsibility of implementing the RFA, stated unequivocally in a letter to you on December 3, 2009 that, "whether viewed separately or together, it is clear that EPA's Clean Air Act greenhouse gas rules will significantly affect a large number of small entities. EPA was therefore obligated under the Regulatory Flexibility Act to convene a Small Business Advocacy Review Panel (or panels) prior to imposing these rules."[4] Unfortunately, EPA did not convene a small business panel to consider the economic impact of its GHG regulations.

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1 The Honorable Susan Walthall, Acting Chief Counsel, Office of Advocacy, SBA to the Honorable Lisa Jackson, Administrator, EPA (Dec. 23, 2009).

2 *Id.*

3 Regulatory Flexibility Act 5 U.S.C. Sec. 601-612.

4 The Honorable Susan Walthall, Acting Chief Counsel, Office of Advocacy, SBA to the Honorable Lisa Jackson, Administrator, EPA (Dec. 23, 2009).

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EPA also failed to develop and evaluate regulatory alternatives that minimize the impact on small business. Instead of conducting this legally required analysis EPA inappropriately certified that its GHG regulations would not impact small business. However, EPA has been internally inconsistent in reporting the burden imposed by these rules. Your agency's certification that the Light Duty Vehicle Rule would not impact small businesses was directly contradicted by language in the Greenhouse Gas Tailoring Rule, which claimed to provide at least $39 billion in regulatory relief otherwise imposed by the car rule in the first year of implementation.[5] The certification also ignores the fact that at least 1,200 small entities would be required to obtain Clean Air Act operating permits for the first time.[6]

EPA has been on notice of its obligation to perform RFA analysis to understand the impact on small businesses since 2008. In a letter sent on November 2008, the former Acting Chief Counsel of Advocacy, Shawne McGibbon, instructed your agency that, "if EPA chooses to go forward with plans to regulate GHGs under the CAA, it is clear that EPA's action will have a 'significant economic impact upon a substantial number of small entities'" and that Advocacy, "will insist that the views of small entities be considered in the pre-proposal stage as required by the Regulatory Flexibility Act."[7] These concerns were reiterated in an OMB memorandum where McGibbon warned that "the decision to regulate CO2 under the [Clean Air Act] for the first time is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities."[8] At the time this memorandum was made public last spring, Administration officials attempted to undermine the reputation of the author in the press.[9] The current acting chief counsel, however, has clearly validated and reasserted her opinion just a few months later.

Indeed, the economic burden associated with these greenhouse gas regulations is even acknowledged by a top White House economic official, who recently warned, "if you don't pass this [Cap-and-Trade] legislation, then ... the EPA is going to have to regulate in this area. And it is not going to be able to regulate on a market-based way, so it's going to have to regulate in a command-and-control way, which will probably generate even more uncertainty."[10]

Despite the wide spread acknowledgment that these regulations will impose a costly burden on the U.S. economy, the EPA has failed to evaluate and minimize the

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[5] Proposed Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 74 Fed. Reg. 55292 (Oct. 27, 2009).

[6] The Honorable Susan Walthall, Acting Chief Counsel, Office of Advocacy, SBA to the Honorable Lisa Jackson, Administrator, EPA (Dec. 23, 2009).

[7] Shawne McGibbon, Acting Chief Counsel to Advocacy to Stephen Johnson, Administrator, U.S. EPA (November 28, 2008.)

[8] Robin Bravender, *Bush Appointee's Office Wrote Economic Critique of EPA Proposal – Admin Source,* GREENWIRE (May, 12, 2009).

[9] Robin Bravender, *Barrasso Accuses White House of Playing Politics with OMB*, E & E News PM (May 13, 2009), *available at*, memohttp://www.eenews.net/eenewspm/print/2009/05/13/2.

[10] Jonah Goldberg, *Dirty Moves Behind Pitch for Cleaner Air*, Boston Herald (Dec. 13, 2009)

economic impact on small businesses. With small business playing a critical role in our economic recovery, it is not acceptable that your agency failed to consider how greenhouse gas regulations would impact their ability to survive. Therefore, it is imperative that you withdraw and re-evaluate your climate change regulations, and provide the necessary analysis as required by law, to ensure that small businesses and American jobs are protected. Accordingly, we request you inform us no later than February 1, 2010 as to how EPA intends to respond to the December 23, 2009 letter from the Office of Advocacy and whether EPA will withdraw the Light Duty Vehicle Rule and the Greenhouse Gas Tailoring Rule until the proper analysis required by the RFA has been conducted. If EPA declines to implement any recommendation made by the Office of Advocacy in its December 23 letter, your response should also include a written justification of such a decision.

If you have any questions regarding this request, please contact Kristina Moore, House Oversight and Government Reform Committee at 202-225-5074, Brian Clifford, Subcommittee on Oversight, Senate Environment and Public Works Committee at 202-224-6176, Bryan Zumwalt, Subcommittee on Clean Air and Nuclear Safety, Senate Environment and Public Works Committee at 202-224-4623; or Bart Forsyth with the Select Committee on Energy Independence and Global Warming at 202-225-0110.

Sincerely,

Darrell E. Issa
Ranking Member
House Oversight and Government Reform Committee

John Barrasso, M.D.
Ranking Member
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Senate Committee on Environment and Public Works

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