

February 9, 2024

THE SURGE

BY THE COMPETITIVE ENTERPRISE INSTITUTE

Welcome to the latest edition of The Surge!

- The EPA's new decision to tighten PM_{2.5} standards is a prime example of the EPA's disregard for sound science.
- Why would any Republican help to create a domestic carbon tax? Along with some climate extremists, a handful of Republicans are supporting the PROVE IT Act that will lead to a domestic carbon tax.
- What's worse than Congress giving a \$27 billion greenhouse gas slush fund to the EPA? Answer: Congress giving EPA the power to hand billions of taxpayer dollars to a small number of favored nonprofits so they can have their own slush funds.

These are just some of the issues covered below. Please let others know about The Surge and they can [subscribe here](#).

Best,
CEI's Energy and Environment Team

SPECIAL FOCUS: BIDEN'S PARTICULATE MATTER RULE

Only six months ago, the Biden administration rightfully [declined](#) to revise the ozone standards in part because it wanted to be able to consider the newest science and do a full review of the standards. Today, by [making](#) the primary annual standard for fine particulate matter (PM_{2.5}) more stringent, the EPA has decided that using the best science and doing a proper review for PM_{2.5} is unwarranted.

This move to tighten the standards is also premature. For criterial pollutants like PM_{2.5}, the EPA must review and, if appropriate, revise the standards every five years. Instead of following this timeline created by Congress, the EPA, right near the start of the Biden administration, [decided](#) to reconsider the final rule finalized in December, 2020 that retained the existing PM_{2.5} standards. This 2020 decision was made after an extensive process and based in part on the advice of the Clean Air Scientific Advisory Committee (CASAC).

Before the EPA decided to reconsider the 2020 final rule, EPA Administrator [Michael](#)

Regan [dismissed](#) all of the advisers from CASAC as well as from another legally required panel, the Science Advisory Board. The agency then filled these panels with its desired members. This shocking and unprecedented move is yet further evidence that the agency is not focused on sound science but achieving its desired policy outcomes.

This [premature and poorly considered decision](#) is also another example of the Biden administration wanting to support the most extreme environmental policies despite the tradeoffs and costs, including how it will hurt the financial well-being of American families. It's also being made as the United States has some of the lowest particulate matter levels in the world.

When the EPA decided to retain the standards in 2020, it explained that US particulate matter levels are “approximately five times below the global average, six times below Chinese levels, and 20% lower than France, Germany, and Great Britain.” Further, based on EPA’s own data, from 2000-2022, average PM2.5 concentration levels [decreased](#) by 42%.

TOP OF THE AGENDA

[Proof of The PROVE IT Act’s Carbon Tax Agenda](#)

A CEI [blog post](#) in late January explained how [S. 1863](#), the PROVE IT Act, would enable narrow partisan majorities to enact carbon tariffs and taxes in future reconciliation bills. In a [post published this week](#), CEI’s Marlo Lewis refutes the Climate Leadership Council’s ([CLC](#)) argument that the PROVE IT Act has “no relevance” to a domestic carbon fee. According to the CLC:

A domestic carbon fee would be applied on fuels when they enter the economy—that data is readily available and has been for several decades. The PROVE IT Act is an analysis of average product-level intensity data. This data, while useful for the reasons listed above, is irrelevant in implementing a U.S. carbon fee.

The CLC’s argument is incorrect in three ways. First, no cosmic necessity restricts the applicability of carbon fees to fossil fuels at the mine mouth, well head, or fuel processing plant. For years, lawmakers have been introducing bills that would also apply carbon fees to industrial categories such as powerplants, iron and steel mills, aluminum production plants, cement kilns, and paper and pulp mills.

Second, in the current Congress, Senators Sheldon Whitehouse (D-RI), Chris Coons (D-DE), Brian Schatz (D-HI), and Martin Heinrich (D-NM) have introduced [S. 3422](#), the Clean Competition Act (CCA), which would implement carbon tariffs and taxes based on the average product-level emissions intensity of traded goods—the same type of data the PROVE IT Act would supply.

Third, and most importantly, product-level emissions intensity data are critical inputs for implementing a carbon border adjustment mechanism ([CBAM](#))—a policy adopted by the European Union and [promoted by the CLC](#) to mitigate the losses trade-exposed, energy-intensive domestic firms incur under an economy-wide carbon tax.

The PROVE IT Act’s relevance to enacting a domestic carbon fee is, thus, fundamental. The bill would provide the database for a CBAM, without which few if any trade-exposed, carbon-intensive manufacturers would support an economy-wide carbon tax.

In a formula: No PROVE IT Act, no CBAM; no CBAM, no carbon tax.

IN THE SPOTLIGHT

[**The Greenhouse Gas Reduction Fund: A Slush Fund For The EPA And Favored Nonprofits**](#)

President Joe Biden signed the so-called [Inflation Reduction Act](#) (IRA) into law on August 16, 2022. The bill, enacted on a purely partisan basis, is filled with wasteful spending, central planning, and attacks on freedom. One program in particular deserves special attention: the [Greenhouse Gas Reduction Fund](#) (section 60103 of the IRA).

Section 60103 amends the Clean Air Act and gives the Environmental Protection Agency (EPA) until September 30, 2024 to distribute \$27 billion for “green” projects. This \$27 billion is in effect a slush fund for the EPA given the wide discretion that Congress has afforded the agency in spending the money.

The slush fund problem is especially egregious because the IRA isn’t just giving the EPA broad discretion to ladle out taxpayer dollars. It also requires the EPA to distribute money to nonprofits that will make their own discretionary choices over how to spend billions of dollars.

The House Energy and Commerce Committee released takeaways from a recent oversight hearing on the Fund that [highlight](#) some concerns regarding the nonprofit applicants, including former Biden administration officials serving on the board of one applicant.

Regardless of whether policymakers agree with the purpose of the Fund, they should want to eliminate the program because it is a slush fund that will likely lead to abuse, cronyism, and waste.

[**Report: SEC Climate Disclosure Rule Imposes Costs Without Value**](#)

A [new CEI report](#) argues that the Securities and Exchange Commission (SEC) climate

disclosure rule exceeds the Commission's statutory authority, undermines its existing disclosure-based framework, and greatly increases costs and work-hour burdens for companies subject to the mandate.

Under the SEC's proposed rule, companies must report how climate change risk factors influence their financial decisions, business, models, locations, and projects. Regulated companies will be required to capture and report data on their direct, indirect, and value-chain produced greenhouse gas (GHG) emissions. The rule will also impose a substantial regulatory cost burden on public companies and their private partners.

Under the SEC's own calculations, the average firm will pay an extra \$864,000 for the mandated disclosures, though some analysts believe the actual cost will be higher. Firms will also be forced to hire lawyers, accountants, and ESG experts to contend with the rule's estimated 39 million additional hours of paperwork.

Despite repeated delays, the SEC is expected to finalize its climate disclosure rule sometime this year.

[Federal Courts to The Rescue on Bad Appliance Regulations?](#)

The United States Supreme Court recently heard a case that could impact [how much deference](#) judges give to regulatory agencies. To be certain, any relief from the so-called Chevron doctrine and its high level of deference would be welcomed. But even before the Supreme Court decision is out, some federal judges are already tiring of being handed a junk analysis from regulators and expected to rubber stamp it. That certainly seems to be the case with some recent legal challenges dealing with bad appliance regulations.

Most recently, in [Louisiana v. US Department of Energy](#), the U.S. Court of the Appeals for the Fifth Circuit invalidated a Biden Department of Energy (DOE) final rule on dishwashers. The decision reads as if the judges all hate their dishwashers. The court was completely unconvinced of the agency's rationale for dodging the problems with its current dishwasher standard, even going so far as to say that it "borders on the frivolous."

FEATURING OUR FRIENDS

[Western Solar Plan Could Threaten 22M Public Lands Acres](#), Gabriella Hoffman, Independent Women's Forum

[Biden's 'Pause' on LNG Exports Is Impulsive and Destructive](#), Travis Fisher, Cato Institute

[Britain's Disastrous Path to Net Zero Is a Warning to the U.S.](#), Andrew Puzder, The Heritage Foundation

[New Jersey's Plastic Bag Ban Backfires Big Time](#), Institute for Energy Research

ENERGY AND ENVIRONMENT REGULATORY TRACKER

The following are some important proposed rules with open comment periods:

[Scientific Integrity Policy Draft for Public Comment](#)

Agency: Environmental Protection Agency (EPA)

Comment Deadline: February 23, 2024

Quick Take: The EPA is proposing a scientific integrity document that conflates policy and science, promotes diversity, equity, and inclusion policies (DEI), and doesn't discuss or even expressly reference the Information Quality Act once within the text of the document.

Additional Helpful Resources: [Draft Policy EPA Scientific Integrity Page](#)

[California State Motor Vehicle Pollution Control Standards; Advanced Clean Cars II Regulations; Request for Waiver of Preemption; Opportunity for Public Hearing and Public Comment](#)

Agency: EPA

Comment Deadline: February 27, 2024

Quick Take: This notice provides the public an opportunity to comment on California's waiver request to allow it to move forward with its new regulations [prohibiting](#) the sale of new internal combustion engine passenger cars, trucks, and SUVs by 2035. This EV mandate has implications beyond California. [Many states](#) have adopted all or part of California's mandate. If the EPA doesn't grant the waiver, this would put an end (for now) to state efforts to limit the ability of Americans to choose what kind of cars they want to drive.

Helpful Resources: California [FAQ Document](#)

[Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts; Request for Comment](#)

Agency: Commodity Futures Trading Commission (CFTC)

Comment Deadline: February 16, 2024

Quick Take: This CFTC guidance would establish standards for voluntary carbon credit markets. In a recent [speech](#), CFTC Chairman Rostin Behnam said that the guidance is "identified as one of the most important developments for the carbon industry, this is the first proposed guidance on standards applicable to exchanges listing products aimed at providing tools to manage risk, promote price discovery, and help channel capital in support of decarbonization efforts." This guidance is yet another effort to have the federal government play a role in making "voluntary" programs seem

legitimate and to exist in the first place. Without the government intervention, such a market likely would not happen.

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