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Submitted via Regulations.gov

RE: EPA-HQ-OAR-2018-0279, Release of Draft Policy Assessment for the Reconsideration of the Ozone National Ambient Air Quality Standards

Ms. Hutson:

I appreciate this opportunity to provide comments¹ to the Environmental Protection Agency (EPA) on the “Policy Assessment for the Reconsideration of the Ozone National Ambient Air Quality Standards, External Review Draft.”² These comments discuss the current reconsideration process along with the draft policy assessment.

1) The Current Reconsideration Process is Unreasonable and Unnecessary

There should have never been a draft policy assessment in the first place because this entire reconsideration process is both unreasonable and unnecessary. On December 23, 2020, the Environmental Protection Agency (EPA) decided to retain both the primary and secondary ozone standards established in 2015.³

This decision was made after a long and thorough process initiated in 2018 that concluded there was no new evidence to justify revising the already stringent standards set just five years earlier. As explained in the preamble to the final rule:

Based on the current health effects evidence and quantitative information, as well as consideration of CASAC [Clean Air Scientific Advisory Committee] advice and public comment, the Administrator concludes that the current primary standard is requisite to

¹ The views I have expressed in this comment are my own and should not be construed as representing any official position of The Heritage Foundation.

² EPA web page entitled “Ozone (O3) Standards - Policy Assessments from Current Review,” <https://www.epa.gov/naaqs/ozone-o3-standards-policy-assessments-current-review> (accessed May 20, 2022).

³ EPA Fact Sheet regarding final decision on ozone standards, December, 2020, https://www.epa.gov/sites/default/files/2020-12/documents/decision_to_retain_ozone_standards_fact_sheet_final2.pdf (accessed May 20, 2022). The final rule was published in the Federal Register on December 31, 2020. Environmental Protection Agency, “Review of the Ozone National Ambient Air Quality Standards,” Final Action, Federal Register, Vol. 85, No. 251 (December 31, 2020) <https://www.federalregister.gov/documents/2020/12/31/2020-28871/review-of-the-ozone-national-ambient-air-quality-standards> (accessed May 20, 2022).

protect public health, including the health of at-risk populations, with an adequate margin of safety, and should be retained, without revision.⁴

The EPA's CASAC overwhelmingly supported retaining the standards. According to the EPA:

With regard to the primary standard, all seven CASAC members agreed that the currently available evidence was generally similar to that available in the last review when the standard was set. Based on this conclusion, six members of CASAC concluded that the primary standard should be retained. One member of CASAC expressed support for a lower standard.

With regard to the secondary standard, all seven members of CASAC agreed that the current evidence supported retaining the current standard without revision.⁵

Under the Clean Air Act, every five years the EPA is required to review and, if appropriate, revise the national ambient air quality standards for ozone.⁶ Therefore, if reviewed on schedule, the EPA would make its next decision on the standards in 2025. Yet, the EPA is reconsidering the 2020 final decision to retain the existing standards less than a year later.⁷

The agency has failed to even clarify why it has decided to take this action. In its announcement regarding the reconsideration,⁸ the EPA, at most, hints at possible reasons stating this new action “reflects the Agency’s renewed commitment to a rigorous NAAQS review process, with a focus on protecting scientific integrity” and the agency will ensure that during this process CASAC “is fully equipped to advise the Administrator and will reinstall an ozone CASAC panel.”⁹ The draft policy assessment sheds no further light on the decision to reconsider the standards.¹⁰ The

⁴ Environmental Protection Agency, “Review of the Ozone National Ambient Air Quality Standards,” Final Action, Federal Register, Vol. 85, No. 251 (December 31, 2020) <https://www.federalregister.gov/documents/2020/12/31/2020-28871/review-of-the-ozone-national-ambient-air-quality-standards> (accessed May 20, 2022).

⁵ EPA Fact Sheet regarding final decision on ozone standards, December, 2020, https://www.epa.gov/sites/default/files/2020-12/documents/decision_to_retain_ozone_standards_fact_sheet_final2.pdf (accessed May 20, 2022).

⁶ 42 U.S.C § 7409, <https://www.law.cornell.edu/uscode/text/42/7409> (accessed May 20, 2022).

⁷ EPA web page entitled “EPA to Reconsider Previous Administration’s Decision to Retain 2015 Ozone Standards,” <https://www.epa.gov/ground-level-ozone-pollution/epa-reconsider-previous-administrations-decision-retain-2015-ozone> (accessed May 20, 2022).

⁸ Ibid.

⁹ In its announcement, the EPA does not assert that not having an ozone panel undermined the review process finalized in 2020 and does not attempt to explain how it had any negative effect. Given the thoroughness of the review process and the compelling evidence informing the decision to retain the standards, and CASAC’s strong support for retaining the 2015 standards, it is understandable why the agency did not make the case for the subpanel and why it was needed. Quite simply, based on the evidence, the subpanel was unnecessary. The draft policy assessment’s conclusions support this conclusion.

¹⁰ EPA web page entitled “Ozone (O3) Standards - Policy Assessments from Current Review,” <https://www.epa.gov/naaqs/ozone-o3-standards-policy-assessments-current-review> (accessed May 20, 2022). There is also no further light shed on this decision in the EPA’s notice of availability regarding the draft policy assessment, Environmental Protection Agency, “Release of Draft Policy Assessment for the Reconsideration of the Ozone National Ambient Air Quality Standards,” Notice of Availability, Federal Register, Vol. 87, No. 83 (April 29, 2022)

agency's lack of clarity is not surprising given that the ozone review process finalized in 2020 was rigorous and informed by the best evidence. As will be discussed, the draft policy assessment itself supports this conclusion.

This premature action is especially alarming due to recent developments in regard to CASAC and the EPA's Science Advisory Board (SAB). In April 2021, EPA Administrator Michael Regan dismissed all of the advisers from both of these two legally required panels.¹¹

This shocking move, which undermines any claim of "protecting scientific integrity," was made before the EPA's decision to reconsider the standards, and certainly gives the impression that the Administrator wants to hear only from those who will support the Biden administration's agenda. It suggests decisions, such as those regarding ozone, are already foregone conclusions.

John Graham, who had led the EPA's disbanded Science Advisory Board, stated after this purge: "Now for the first time in the agency's 50-year history, we have an administrator interested in scientific advice only from those scientists he has personally appointed."¹²

In 2009, President Obama issued a memorandum on scientific integrity, arguing that the public must be able to trust the science and the scientific process used by agencies.¹³ He was absolutely right. Unfortunately, this current process undermines that trust.

2) The Draft Policy Assessment Should Stop This Entire Process

EPA staff, in the draft policy assessment, has made it perfectly clear that the 2020 decision to retain the ozone standards should be respected. The draft policy assessment is an exclamation point to this comment's argument that the EPA should end this reconsideration.

This is what the draft policy assessment concludes regarding the primary standard:

Collectively, these considerations (including those discussed above) provide the basis for the preliminary conclusion that the available evidence and exposure/risk information does not call into question the adequacy of protection provided by the existing standard or the scientific and public health judgments that informed the 2020 decision to retain the current standard, which was established in the 2015 review. Accordingly, we conclude it is appropriate in this reconsideration of the 2020 decision that consideration be given to

<https://www.federalregister.gov/documents/2022/04/29/2022-09214/release-of-draft-policy-assessment-for-the-reconsideration-of-the-ozone-national-ambient-air-quality> (accessed May 31, 2022).

¹¹ Daren Bakst, "Congress Needs to Undo EPA's 'Science Massacre,'" Heritage Foundation Commentary, May 20, 2021, <https://www.heritage.org/agriculture/commentary/congress-needs-undo-epas-science-massacre> (accessed May 20, 2022).

¹² Lisa Friedman, "The E.P.A. administration purges its scientific advisory boards, which included many Trump appointees." The New York Times, <https://www.nytimes.com/2021/03/31/us/epa-advisory-boards-trump.html> (accessed May 20, 2022).

¹³ Executive Office of the President, "Presidential Memoranda: Memorandum for the Heads of Executive Departments and Agencies 3-9-09," Federal Register, Vol. 74, No. 46 (March 11, 2009), p. 10671, <https://www.federalregister.gov/documents/2009/03/11/E9-5443/scientific-integrity> (accessed May 20, 2022).

retaining the current primary standard of 0.070 ppm O₃, as the fourth-highest daily maximum 8-hour concentration averaged across three years, without revision.¹⁴

Regarding the secondary standard, the draft policy assessment uses similar language as with the primary standard:

Based on all of the above considerations, we conclude that the currently available evidence and quantitative exposure/risk information does not call into question the protection afforded by the current secondary standard, such that it is appropriate to consider retaining the current standard without revision.¹⁵

In other words, EPA staff is properly concluding that there is nothing new in the scientific evidence to justify revising the standards and there was nothing problematic with the judgments informing the 2020 decision. These conclusions rebut any suggestion that the previous process was not rigorous or scientifically sound. When deciding to reconsider the standards, the EPA did not offer a direct and clear reason for doing so, and EPA staff has now “shot down” the arguably hinted at reasons for the reconsideration.

3) Additional Reasons to Stop the Reconsideration Process

The last time the EPA jumped the gun on new ozone standards was during the Obama administration. In 2011, President Barack Obama directed the EPA to withdraw what was going to be new and stricter ozone standards than the then-recently finalized 2008 standards,¹⁶ explaining:

I have continued to underscore the importance of reducing regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover. With that in mind, and after careful consideration, I have requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards at this time.¹⁷

While the Obama administration should not have tried to prematurely make the ozone standards more stringent, at least it did not move forward with that new rule. The decision to reconsider the 2008 ozone standards was a policy decision as was moving early to revise the standards, and

¹⁴ “Policy Assessment for the Reconsideration of the Ozone National Ambient Air Quality Standards,” Environmental Protection Agency, April, 2022 at p. 3-102, https://www.epa.gov/system/files/documents/2022-04/o3_reconsideration_draft_pa-v_final-compressedfinal.pdf (accessed May 20, 2022).

¹⁵ Ibid at p. 4-121.

¹⁶ “Obama administration withdraws draft ozone ambient air quality standards and reinstates 2008 standards,” Morgan, Lewis & Bockius LLP, Lexology, September 14, 2011 <https://www.lexology.com/library/detail.aspx?g=90a2ed7a-1552-4bd8-b49d-d834856737f5> (accessed May 20, 2022).

¹⁷ “Statement by the President on the Ozone National Ambient Air Quality Standards,” September 2, 2011, <https://obamawhitehouse.archives.gov/the-press-office/2011/09/02/statement-president-ozone-national-ambient-air-quality-standards> (accessed May 20, 2022).

President Obama made a policy decision to direct the EPA to withdraw the draft rule.

As for the current reconsideration process, the EPA should not have had made the decision to start it. From a science perspective, this is true. From a policy and economic perspective, this is also true. Just as the Obama administration recognized the severe harm that a stricter standard could have caused the economy, the Biden administration should draw the same conclusion now before wasting any more time and resources¹⁸ before it gets to a rule stage.

Americans are getting crushed by inflation not seen in over 40 years, with the April year-over-year price increase at 8.3 percent.¹⁹ The nation is trying to recover from the impacts of the COVID-19 pandemic. Making standards stricter now would certainly result in major regulatory costs. At the time the 2015 ozone standards were being considered, the National Association of Manufacturers (NAM) commissioned a study by NERA Economic Consulting.²⁰ The study focused on the impact of a primary standard set at 65 parts per billion (the current standard is now at 70 parts per billion).

While the findings of that study today would likely be different (greater or lower) than they were when the study was done, NAM explained that the study found the standard could have reduced U.S. GDP by \$140 billion per year and \$1.7 trillion from 2017 to 2040. It could have resulted in 1.4 million fewer job equivalents on average through 2040 and cost the average U.S. household \$830 per year in the form of lost consumption.²¹ As NAM also explained, it could have been the costliest U.S. regulation in history.²²

When directing the agency to withdraw the ozone rule in 2011, President Obama did not just focus on economic considerations. He also focused on the timing and stated, “Ultimately, I did not support asking state and local governments to begin implementing a new standard that will soon be reconsidered.”²³ This argument made sense then and it makes sense now. If the EPA stops this current process, as it should, the agency will still have to review the ozone standards very soon. If the agency stays on schedule, it will be just three years when another final decision regarding the standards would be made.

¹⁸ Regarding using even more time and resources, the CASAC ozone panel reportedly has delayed its review of the draft policy assessment. Sean Reilly, “EPA advisory board pauses ozone standards review,” E&E News PM, May 13, 2022.

¹⁹ Consumer Price Index Summary, Bureau of Labor Statistics, May 11, 2022, <https://www.bls.gov/news.release/cpi.nr0.htm> (accessed May 20, 2022).

²⁰ “Potential Economic Impacts of a Stricter Ozone Standard,” National Association of Manufacturers, https://documents.nam.org/Nam.org_Web_Archive/www.nam.org/Data-and-Reports/Reports/Potential-Economic-Impacts-of-a-Stricter-Ozone-Standard/index.html (accessed May 20, 2022).

²¹ Ibid.

²² Ibid.

²³ “Statement by the President on the Ozone National Ambient Air Quality Standards,” September 2, 2011, <https://obamawhitehouse.archives.gov/the-press-office/2011/09/02/statement-president-ozone-national-ambient-air-quality-standards> (accessed May 20, 2022).

There are other compelling reasons for the EPA to stop the reconsideration process such as the agency's own data showing the national average in ozone concentration levels declined by 20 percent between 2000-2020 and declined by 10 percent between 2010-2020.²⁴ Instead of getting worse, the country's ozone levels continue to improve, making a rush to reconsider the standards unjustified.

Further, in October, 2021, when making the decision to reconsider the standards, the EPA explained that there were about 100 counties with ozone levels that measured above the 2015 standards.²⁵ This is not an argument for reconsidering the standards, which the EPA apparently thinks, but a clear argument against reconsidering the standards at this time. It is additional evidence that it is premature to make the standards even more stringent (or to engage in this reconsideration process) as the country and the EPA still work to meet the 2015 standards.

Conclusion

There are numerous reasons for the EPA to stop the reconsideration of the ozone standards, as outlined in this comment. This includes the draft policy assessment's conclusions that the standards should be retained. I strongly urge the agency to stop the reconsideration process, which is premature and unsupported by any evidence.

Sincerely,

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²⁴ EPA web page entitled "Ozone Trends," <https://www.epa.gov/air-trends/ozone-trends> (accessed May 20, 2022).

²⁵ EPA web page entitled "EPA to Reconsider Previous Administration's Decision to Retain 2015 Ozone Standards," <https://www.epa.gov/ground-level-ozone-pollution/epa-reconsider-previous-administrations-decision-retain-2015-ozone> (accessed May 20, 2022).