

Oral Statement for the Clean Air Scientific Advisory Committee (CASAC) Ozone Panel
Public Meeting

Daren Bakst
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Thank you for this opportunity to provide comments.¹

My name is Daren Bakst and I'm Senior Research Fellow, Environmental Policy and Regulation in The Heritage Foundation's Center for Energy, Climate, and Environment.

The views I express are my own and shouldn't be construed as representing any official position of The Heritage Foundation.

Today, I'd like to focus on process and scientific integrity.

On December 23, 2020, the EPA decided to retain both the primary and secondary ozone standards established in 2015.²

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, the decision was "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..."³

And 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

¹ These comments were drafted to be presented orally.

² 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).

³ 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).

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.⁴

So, why did the agency decide to reconsider the ozone standards less than a year after the standards were retained?⁵

The agency has failed to answer that question.

The EPA hints at possible reasons. For example, the agency states this new action “reflects the Agency’s renewed commitment to a rigorous NAAQS review process, with a focus on protecting scientific integrity.”⁶

But the agency doesn’t provide support or even assert in its reconsideration decision that the last process wasn’t rigorous. And the EPA staff in the draft policy assessment reaches conclusions that contradict any contention to the contrary.

The agency says it is concerned with scientific integrity.

But in April 2021, EPA Administrator Michael Regan dismissed all of the advisers from CASAC and the Science Advisory Board, both of these two legally required panels.⁷

This shocking move undermines any claim of “protecting scientific integrity.” It was made before the EPA’s decision to reconsider the ozone 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.”⁸

⁴ 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).

⁵ 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).

⁶ 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).

⁷ 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).

⁸ 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).

The fact that the ozone panel would even have to consider undertaking a new deep dive into the science at this time is strong support that there isn't an obvious or compelling reason for this reconsideration in the first place.

If this reconsideration process ended right now, as it should, the standards would still have to be reviewed, and if appropriate, revised by 2025. That means the review process would start as soon as next year.

And during that review process, CASAC would be able to, and in fact should, do a deep dive into the science to ensure that the best available science is used.

A lot can be learned from the last time the agency jumped the gun through an ozone reconsideration process.

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,⁹ largely out of concern for the economy.¹⁰

The Biden administration should have similar concerns.

Currently, Americans are getting crushed by inflation not seen in over 40 years, with the April year-over-year price increase at 8.3 percent.¹¹ The regulatory costs and economic harms of a stricter ozone standard could be devastating.

When directing the EPA to withdraw the ozone rule, President Obama didn't just focus on economic considerations though. 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."¹²

That argument made sense then and it makes now.

⁹ "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).

¹⁰ "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).

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

¹² "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).

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I would strongly urge the CASAC ozone panel to do what it can to convey to the EPA the inappropriateness of this entire reconsideration process. And if the reconsideration process does continue, the panel should conclude that the rigorous processes and overwhelming evidence for retaining the standards should be respected at this time.

Thank you.