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ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

June 15, 2015

To: Subcommittees on Energy and Power, and Commerce, Manufacturing and Trade, Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on "EPA's Proposed Ozone Rule: Potential Impacts on Manufacturing"

On Tuesday, June 16, 2015, at 10:15 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittees on Energy and Power, and Commerce, Manufacturing and Trade will hold a joint hearing on a "EPA's Proposed Ozone Rule: Potential Impacts on Manufacturing." Issued on November 25, 2014, the Environmental Protection Agency's (EPA) proposal would tighten the level of the ozone National Ambient Air Quality Standard (NAAQS) from its current level of 75 parts per billion (ppb) to a level between 65 and 70 ppb.[1]

On June 12, 2015, the Subcommittee on Energy and Power held a hearing on EPA's proposed ozone standard with Acting Assistant Administrator for Air and Radiation, Janet McCabe. For further information on the proposed rule, please see the memo for the previous hearing. The following memo provides additional information to clarify various claims associated with EPA's proposed ozone NAAQS.

I. EPA'S PROPOSED REVISION TO THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE

The Clean Air Act (CAA) requires EPA to set national ambient air quality standards (NAAQS) for certain pollutants that endanger public health and the environment. EPA sets primary NAAQS at concentration levels sufficient to protect the public health with an "adequate

[1] U.S. Environmental Protection Agency, *National Ambient Air Quality Standard for Ozone*, 79 Fed. Reg. 75234 (Dec. 17, 2014) (proposed rule) (online at www.federalregister.gov/articles/2014/12/17/2014-28674/national-ambient-air-quality-standards-for-ozone).

margin of safety."[2] In essence, for certain pollutants emitted from "numerous and diverse sources" the primary NAAQS identify the level of ambient air pollution that is "safe" to breathe. These standards are the cornerstone of the Clean Air Act.

On November 20, 2014, EPA proposed to tighten the ozone NAAQS from 75 ppb to a level between 65 and 70 ppb.[3] This level is consistent with the recommendations of the independent Clean Air Scientific Advisory Committee (CASAC), indicating a level between 60 and 70 ppb would be protective of public health, based on the latest scientific knowledge.

EPA is currently considering comments it received on the ozone NAAQS proposal and will finalize the standard by October 1, 2015.

II. INDUSTRY REACTION TO THE OZONE RULE

Although the Clean Air Act requires EPA to set NAAQS at levels that will protect human health and welfare without considering costs, EPA's analysis shows that the health benefits of a 65 to 70 ppb ozone standard would significantly outweigh compliance costs by billions of dollars per year. EPA has estimated the cost of a 65 ppb ozone standard would be $15 billion with $19-38 billion in benefits (excluding California), and the cost of a 70 ppb ozone standard would be $3.9 billion with $6.4-$13 billion in benefits (excluding California). Although these estimates may not legally be used in setting the standard, they were reviewed and approved by the Office of Management and Budget as part of EPA's Regulatory Impact Analysis.[4]

A. Industry Claims

Industry has produced some estimates that are greatly inflated in comparison to these figures. In July 2014, well before the ozone proposal was issued, the National Association of Manufacturers (NAM) issued a report claiming that the ozone standards would be the most expensive rule ever issued and would reduce Gross Domestic Product by up to $270 billion per year.[5] NAM updated its hastily prepared analysis in February 2015, to examine a 65 ppb standard and reached a revised estimate of $140 billion per year.[6] At the June 12, 2015 hearing,

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[2] Clean Air Act § 109(b)(1).

[3] Letter from Dr. H. Christopher Frey, Chair of the Clean Air Scientific Advisory Committee to U.S. Environmental Protection Agency Administrator Gina McCarthy (Jun. 26, 2014) (online at yosemite.epa.gov/sab/sabproduct.nsf/5EFA320CCAD326E885257D030071531C/$File/EPA-CASAC-14-004+unsigned.pdf).

[4] U.S. Environmental Protection Agency, *Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone* (Nov. 26, 2014) (online at www.epa.gov/ttnecas1/regdata/RIAs/20141125ria.pdf).

[5] National Association of Manufacturers, *Assessing Impacts of a Stricter National Ambient Air Quality Standard for Ozone*, (Jul. 2014) (online at www.nam.org/Issues/Energy-and-Environment/Ozone-Regulations/NERA-NAM-Ozone-Full-Report-20140726/).

[6] National Association of Manufacturers, *Economic Impacts of a 65 ppb National*

a number of Democratic members cited NAM's exaggerated claims when criticizing the proposed ozone rule.

There are numerous problems with this study. Perhaps most importantly it fails to include any estimate of benefits. The entire purpose of EPA's clean air rules is to realize public health and environmental benefits. In response to NAM's one-sided analysis, economist and MIT professor Frank Ackerman noted that:

> "'[I]f there were no resulting health and environmental benefits, would it be worth engaging in environmental regulation?' The negative answer is not surprising, and is also not informative. If you don't need food, is it worth spending money in a supermarket?"[7]

When asked about the how the monetized benefits of the proposed ozone rule compare to the costs, Assistant Administrator McCabe explained that every dollar spent is expected to produce $3 in benefits.[8]

The Congressional Research Service has identified numerous other problems with both studies that cause the costs to be inflated--such as use of outdated data from 2008 and 2010 regulatory analyses, use of an incorrect baseline that does not include the effects of the Cross State Air Pollution Rule, and artificially restricting compliance options in the analysis.[9]

B. The Clean Air Act's Track Record

In the past, when faced with pollution reduction requirements, industry has engaged in hyperbolic and unsupported claims of catastrophic high costs and the destruction of the economy. Industry's reaction has been no different or any more grounded in fact where the EPA's proposed ozone standard is concerned. Industry's erroneous claims about the Clean Air Act's relative costs and benefits are based on inaccurate assumptions and methodologies that omit and undercount the effects of relevant environmental and behavioral factors and appropriate indices.

Ambient Air Quality Standard for Ozone, (Feb. 2015) (online at www.nam.org/Issues/Energy-and-Environment/Ozone/Economic-Impacts-of-a-65-ppb-NAAQS-for-Ozone-%28NERA%29.pdf).

[7] Media Matters, *Experts: Pro-Smog Pollution Report Is "Unmoored From Reality"* (Aug. 20, 2014) (online at mediamatters.org/research/2014/08/20/experts-pro-smog-pollution-report-is-unmoored-f/200490).

[8] House Committee on Energy and Commerce, Subcommittee on Energy and Power, Statement of Janet McCabe, Acting Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, *Hearing on EPA's Proposed Ozone Rule*, 114th Cong. (Jun. 12, 2015) (online at democrats.energycommerce.house.gov/sites/default/files/documents/Testimony-McCabe-EP-EPA-Ozone-Rule-2015-06-12.pdf).

[9] Congressional Research Service, *Ozone Air Quality Standards: EPA's 2015 Revision* (Jun. 8, 2015) (R43092) (online at www.crs.gov/pdfloader/R43092).

Assistant Administrator McCabe noted that, "in 1997, there were similar claims made that the 1997 standards were going to kill the economy and that absolutely hasn't come true."[10] Further, the NAM study ignores the fact that respiratory distress from less protective ozone standards puts a drag on economic productivity and household growth through longer hospital stay, higher healthcare bills, and more missed workdays.

The argument that Americans have to choose between economic strength and clean air, is not supported by the facts. At the June 12, 2015 hearing, Assistant Administrator McCabe pointed out that:

> "[The history of the Clean Air Act] actually shows us the two things go hand in hand. We reduced air pollution dramatically in this country, and the economy has grown. We've also shown this country and businesses in this country have come up with pollution control technologies that employ American workers and make us leaders in the world on selling this kind of technology."[11]

Since its adoption in 1970, the Clean Air Act has reduced key air pollutants by over 70%, while the economy has more than tripled in size.[12] When looking at all of the pollution reduction measures derived from the Clean Air Act, by 2020 the combined economic benefit of reducing air pollution is estimated at almost $2 trillion dollars, exceeding the costs by 30 to 1.[13]

III. WITNESSES

The following witnesses are expected to testify:

Ross E. Eisenberg
Vice President, Energy and Resources Policy
National Association of Manufacturers

Erin Monroe Wesley
Executive Vice President and Chief Operating Officer

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[10] House Committee on Energy and Commerce, Subcommittee on Energy and Power, Statement of Janet McCabe, Acting Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, *Hearing on EPA's Proposed Ozone Rule*, 114th Cong. (Jun. 12, 2015) (online at democrats.energycommerce.house.gov/sites/default/files/documents/Testimony-McCabe-EP-EPA-Ozone-Rule-2015-06-12.pdf).

[11] *Id.*

[12] U.S. Environmental Protection Agency, *Air Quality Trends* (online at www.epa.gov/airtrends/images/y70_12_lineStyles.png) (updated 2013).

[13] U.S. Environmental Protection Agency, Office of Air and Radiation, *The Benefits and Costs of the Clean Air Act from 1990 to 2020: Summary Report*, at 2 (Mar. 2011) (online at www.epa.gov/cleanairactbenefits/feb11/summaryreport.pdf).

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