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U.S. Environmental Protection Agency
EPA Docket Center
Air and Radiation Docket
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1200 Pennsylvania Avenue NW
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2018-0279

Re: Review of the Ozone National Ambient Air Quality Standards

The American Coal Council (or “ACC”) submits these comments in response to the Environmental Protection Agency’s (“EPA”) Federal Register Notice of August 14, 2020 regarding EPA’s proposal (“Proposal”) to retain without revision the current primary (health-based) and secondary (welfare-based) national ambient air quality standards (“NAAQS”) for photochemical oxidants including ozone (or O₃).

The ACC is a nonprofit trade association in its 38th year representing the collective business interests of the American coal industry. Our members include coal suppliers, transportation companies, terminals, utilities and independent power providers, industrial consumers, and support services suppliers. Since our member companies touch every aspect of turning one of America’s most abundant energy resources into reliable and affordable electricity for the United States economy, our Association has first-hand knowledge of the direct and indirect impacts of coal-related regulations and a unique, “boots on the ground” perspective. Coal is also integral to the steel-making process and the industrial production of cement, chemicals, and paper. Our diverse membership base encompasses the entire coal supply chain, and it is from this broad perspective that we assess the impacts of regulations impacting coal supply and use. While ACC provides these comments from that broad perspective, individual member companies of ACC may submit separate comments on their own behalf that offer additional or other views.

**Background**

The current EPA review of the O₃ standards is required by the Clean Air Act and was initiated in 2018. EPA’s most recent prior review of the O₃ standards was in 2015 and
revised the primary and secondary standards from 75 parts per billion (ppb) to a more stringent level of 70 ppb. In its decision on litigation of the 2015 standards, the U.S. Court of Appeals for the District of Columbia Circuit upheld the 2015 primary standard but remanded the secondary standard to EPA for further justification or reconsideration. EPA has indicated the court’s remand of the secondary standard has been considered in its Proposal not to change the standards at this time.

In EPA’s 2015 rulemaking process, an ozone standard of 65 to 70 ppb was initially proposed. The American Coal Council did not support this and took the position that the standard should remain at the then-current level of 75 ppb. EPA had concluded in 2008 that a 75 ppb ozone standard was protective of American health, and the 2008 standard was still being implemented in 2015.

ACC had expressed concerns about anticipated widespread negative impacts of lowering the standard to 65 to 70 ppb, including hardships for U.S. businesses, manufacturers, families, and state and local governments. EPA had estimated costs for the 65 ppb ozone standard at $15 billion annually\(^1\), but this estimate did not include economy-wide repercussions. NERA Economic Consulting’s 2015 analysis of a 65 ppb standard showed severe economic impacts. These included GDP reductions of $140 billion per year and a total reduction to GDP of $1.7 trillion over the period 2017 to 2040, a loss of 1.4 million job-equivalents per year, and a decrease of $830 in average household consumption annually\(^2\). It also included cost increases for electricity of up to 2.8% and for natural gas up to 6.3% in the base case.\(^3\)

Additionally, ACC also expressed concern then about the reliance on unknown, unidentified, or unachievable controls and technology for compliance with a 65 ppb standard. NERA Economic Consulting’s study found that more than half of the needed reductions would have to come from unidentified compliance measures.\(^4\)

In 2015, ACC was also concerned that EPA’s proposed range of 65-70 ppb was at or near the level of naturally occurring ozone in some areas, particularly in the western United States. This could cause nonattainment issues, which could severely limit economic growth and infrastructure development. Permit uncertainly, delays, and

\(^1\) Environmental Protection Agency news release “EPA Proposes Smog Standards to Safeguard Americans from Air Pollution”, November 26, 2014.


restrictions increase the cost of doing business and make it more difficult for companies to compete.

With this Proposal, on the basis of EPA’s extensive update and review of the scientific, technical, and policy aspects of the ozone NAAQS, EPA puts forward the rationale to retain the existing standards at 70 ppb without revision, which is appropriate.

Moreover, our nation’s air quality has continued to improve. EPA’s tracking of air emissions data shows that the combined emissions of criteria and precursor pollutants decreased by 77 percent from 1970 through 2019. For ozone specifically, the tracked 8-hour average concentrations in ambient air have declined 25 percent since 1990.

**EPA Administrator’s Setting of NAAQS**

The EPA Administrator considers the scientific evidence in reviewing and setting NAAQS, which must protect public health and welfare. The Administrator must exercise public policy judgment, and set NAAQS that are not lower or higher than necessary.

The primary NAAQS is health-based, and the standard must protect public health with an adequate margin of safety. The standard should protect sensitive population groups, but does not need to protect the most sensitive individual nor eliminate all risk.

The secondary NAAQS is welfare-based, and the standard must protect against known or expected adverse effects and determine a target level of public welfare requiring protection. If there is profound scientific uncertainty, the Administrator may conclude that no reasoned judgment is possible on the appropriate indicator, form, or level of a revised secondary NAAQS.

**Retention of the Current Primary NAAQS**

EPA’s Proposal to retain the current ozone NAAQS primary standard, without revision, was informed by the Administrator’s consideration of the currently available scientific health effects of the Integrated Science Assessment (“ISA”), the policy-relevant aspects of the evidence and quantitative analyses of the Policy Assessment (“PA”), and advice and recommendations of the Clean Air Scientific Advisory Committee (“CASAC”) as well as public comments.

Scientific health effects information included examining controlled human exposure studies, epidemiological studies, toxicological studies, and new exposure and risk assessments.

In EPA’s most recent prior review of NAAQS ozone in 2015, sensitive populations including children, asthmatics, older people, outdoor workers were considered. The

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standard of 70 ppb set in 2015 was determined to protect public health with an adequate margin of safety including for these sensitive populations, and this lends support to the retention of the 70 ppb standard now. Likewise, EPA has considered those sensitive populations again in this rulemaking.

**Retention of the Current Secondary NAAQS**

The United States Court of Appeals for the District of Columbia Circuit (“DC Circuit”) remanded EPA’s 2015 secondary standard for ozone NAAQS for reasons that included EPA’s inadequate explanation of its focus on a three-year average for consideration of cumulative exposure, in terms of W126, identified as providing requisite public welfare protection, and EPA’s decision to not identify a specific level of air quality related to visible foliar injury.

EPA comprehensively addressed both of these issues in developing the current Proposal.

The perspective of the Administrator as set forth in the Proposal about the rationale for use of the three-year average is informed by EPA staff’s PA, which the CASAC is in agreement with.

Likewise, for the Administrator’s decision not to identify a specific level of air quality related to visible foliar injury, the staff’s PA found the evidence and information about visible foliar injury provided no basis for calling into question the adequacy of protection under the current standard. Review by the CASAC highlighted the issue of uncertainties that continue to hamper efforts to quantitatively assess the relationship between visual foliar injury and ozone exposure. This informed the Administrator’s decision not to identify a level of air quality specific to visible foliar injury.

Therefore, the Proposal sufficiently addresses both of these issues.

**Ozone Effects on Climate**

Ozone effects on the climate were also considered, and the Administrator was informed by the conclusions of his staff and the CASAC. Due to uncertainty about climate effects of ozone, and the limitations and lack of quantitative tools to consider how ozone concentrations affect regional alterations in temperature, precipitation and other climate variables, the Administrator proposed to conclude there is insufficient information to determine whether the current standard is adequate or to provide a basis for revising the current standard.

**Impacts to Regions, Economies, and Communities**

The 70 ppb standard set in 2015 is approaching the level of naturally occurring ozone in some areas, particularly in the western United States, and this may result in some nonattainment issues. A lowering of the ozone NAAQS standard would be unhelpful and
could deter development. This would be especially unfortunate given the ongoing COVID-19 pandemic and severe economic downturn.

In the case of ozone NAAQS, the existing standard is broadly shown to be protective. Lowering the standard or the imposition of additional regulatory burdens are unwarranted. Consideration by EPA of issues of background concentrations of ozone and socioeconomic impacts should be approached from the perspective of reasonable and prudent regulation, and regulatory actions that might produce only small or de minimus improvement should be avoided.

**Conclusion**

EPA’s Proposal is the culmination of a multi-year regulatory process required under the Clean Air Act. ACC supports EPA’s Proposal to retain the current primary and secondary ozone NAAQS without revision as being appropriate and reasonable. The substantial uncertainties and limitations in the science and quantitative tools fail to provide justification to change the standards.

ACC agrees that the existing primary ozone NAAQS at 70 ppb continues to protect the public health with an adequate margin of safety, including for sensitive populations. The existing secondary ozone NAAQS at 70 ppb continues to protect the public welfare against known or reasonably anticipated adverse effects.