

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

July 28, 2011

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Jackson:

Pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, the Committee on Energy and Commerce seeks information regarding your reconsideration of ambient air quality standards for ground-level ozone and your proposed standards, which we understand you are seeking to promulgate in the very near future. If finalized, these standards will impose unprecedented costs, ranging from \$19 billion to \$90 billion annually by your agency's own estimates, and result in new regulatory burdens for employers, businesses and already cash-strapped States and communities struggling to grow their local economies and create jobs. These would be the single most expensive environmental standards ever to be imposed by any Administration on the U.S. economy.

We are committed to continuing our nation's progress towards a cleaner environment and seeing related improvements to public health. It is well documented that, under existing standards and regulations, air quality in the United States has improved considerably and will continue to do so. EPA's data show significant declines for all six common air pollutants, including ozone, with the agency expecting continued improvement under those *existing* regulations.

We also believe that an essential ingredient for such continued progress is a strong economy. Accordingly, appropriate implementation of the Clean Air Act to protect public health and the environment requires appropriate consideration of the economic and employment impacts of regulations. A healthy national economy is essential for adequately protecting the public health and our environment.

In light of the economic climate, it is important to note that your decision to issue these onerous regulations at this time is a choice – it is completely discretionary on your part. There are already stringent ozone ambient air quality standards in place that were issued as recently as 2008. Your choice to promulgate alternate costly new standards outside of the Clean Air Act's normal five year review cycle defies common sense. The discretionary basis for such expensive decisions also raises serious questions about the Administration's priorities at a time when the nation's focus should be on economic recovery and job creation. The appropriate approach for the agency would be to follow the Clean Air Act's normal five year review process.

Given the potentially devastating impacts of your proposed new standards on the U.S. economy and jobs, and the vast array of new regulatory and control requirements that will be triggered for States, localities, and businesses across the nation, the Committee will conduct hearings relating to the proposed ozone standards after the August congressional district work period. We expect to examine, in particular, the consequences for areas that will be designated in non-attainment with the standards if they are finalized. Your participation will be essential to these hearings; we will be in contact regarding the specific date for taking your testimony. In the interim, to assist the Committee in evaluating decisions regarding the development of the proposed ozone standards, we request that you provide written responses to the following questions and provide the requested documents by August 16, 2011:

1. When deciding to initiate a reconsideration of the 2008 national ambient air quality standards for ozone, did you consider the state of the nation's economy and unemployment rate? Provide all analyses and briefing or decision memoranda prepared for you or other senior Administration officials relating to the decision on whether or not to propose a reconsideration of the ozone standards.
2. Did you personally brief the President regarding the decision to initiate reconsideration of the 2008 ozone national ambient air quality standards, or to propose or finalize new revised standards?
  - a. If yes, when did such communications or discussions occur; who was present; and did you discuss or provide information about the potential adverse impacts of the proposed ozone standards on the U.S. economy, jobs, or competitiveness?
  - b. With whom on the President's staff have you met or shared materials regarding your proposed reconsideration of the ozone standards? Did you provide information concerning impacts of the proposed standards on the U.S. economy, jobs, or competitiveness?
3. EPA's proposed new ozone standards announced in January 2010, if finalized, would replace national ambient air quality ozone standards already established in 2008, which in turn supplemented standards established in 1997. The 2008 ozone standards were determined to be protective of public health and were based on the then-Administrator's lengthy and thorough review of the science and policy advice.

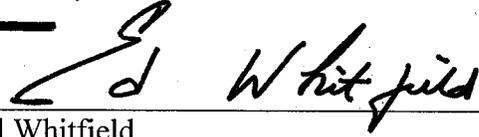
- a. Has the President or senior staff in the Executive Office of the President been made aware that, according to EPA in its updated Regulatory Impact Analysis, a majority of the costs of attaining the tighter alternative standards will be incurred through technologies that do not currently exist, which means compliance costs are likely to be higher than currently estimated?
  - b. Has the President or senior staff in the Executive Office of the President been made aware of the full range of potential adverse consequences of the new standards on counties and areas that cannot meet the new standards, including difficulty in attracting and retaining businesses and industries due to increased operating expenses, stringent permitting and delays, and restrictions on expansions?
  - c. Has the President or senior staff in the Executive Office of the President been made aware that there will be *additional significant* costs, beyond the \$19 billion to \$90 billion annual implementation costs estimated by EPA, associated with implementing the stringent "secondary" standard relating to growth rates of vegetation?
4. Please provide all documents, briefings and analysis that have been shared with the President or staff of the Executive Office of the President after the publication of the proposal to reconsider the 2008 ambient air quality standards for ozone. These documents should include, but not be limited to:
- a. Any analysis, maps, charts, and documents describing potential non-attainment associated with any primary or secondary ozone ambient air quality standard;
  - b. Any analysis of the costs and benefits associated with any policy options considered, including impacts on U.S. employment, manufacturing, and transportation;
  - c. Any analysis of the cumulative impacts of the 2008 reconsideration of the ozone ambient air quality standard taken together with the recently proposed Utility MACT and recently finalized new Transport Rule, including impacts on U.S. employment, manufacturing, and transportation; and,
  - d. Plans to address future non-attainment through Federal Implementation Plans, or model State Implementation Plans for State adoption.
5. Please provide a summary of public comments received on the proposed reconsideration.
- a. Please include a summary of comments submitted on the proposed rule by the public, stakeholders, or State and local governments during the public comment period.
  - b. Also include a description of any meetings between staff of the Administrator's office and outside parties, including attendees; materials provided; and a summary of key points.

6. As noted above, EPA's cost estimate for its proposed ozone standards includes only the costs of implementing the "primary" standard and does not include the costs associated with the "secondary" standard. EPA's cost estimates for the proposed standards also do not include the costs associated with attaining either the primary or secondary standard in the many areas that will be included for the first time in the revised monitoring network.
  - a. What are the compliance costs estimated for implementing EPA's proposed "secondary" ozone standard? Has EPA prepared a quantitative analysis of these costs? If yes, please provide copies of all such analyses.
  - b. What are the estimated compliance costs associated with implementing the "primary" and "secondary" standards in those areas that will be added to the program as the result of the expansion of the monitoring network?
7. In a December 8, 2010, filing, with the Court of Appeals for the District of Columbia, the Department of Justice specifically stated that EPA's decision to reconsider the 2008 ozone ambient air quality standards is discretionary. Moreover, the filing stated: "No statute requires such reconsideration or establishes a schedule for EPA's rulemaking to do so." However, in a letter dated June 13, 2011, to Senator Tom Carper, you state that the legal defensibility of the 2008 decision posed major challenges for the Federal government. Please provide all legal opinions or memoranda prepared for the Administrator or the Assistant Administrator for Air and Radiation relating to the legal defensibility of the 2008 ozone ambient air quality standards.
8. How does the decision to set aside the 2008 ozone standards comport with the President's recent Executive Order 13563 and the principles that he has reaffirmed for the regulations issued during his Administration?
  - a. Specifically, how does the reconsideration of the 2008 ozone standards promote economic growth, innovation, competitiveness, and job creation?
  - b. How does the reconsideration comport with the President's order that agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs?
  - c. In proposing the alternate ozone standards, how did you tailor the regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, the costs of cumulative regulations?
  - d. Did you, in choosing among alternative regulatory approaches, choose those approaches that maximize net benefits?
9. Has the President authorized you to proceed with issuing the new ozone standards?

We request that you adhere to the instructions relating to the requests for documents attached to this letter. Thank you for your prompt attention to this request. Should you have any questions, please contact Mary Neumayr of the Majority Committee staff at (202) 225-2927.

Sincerely,

  
Fred Upton  
Chairman

  
Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

  
Cliff Stearns  
Chairman  
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable William Daley  
Chief of Staff to the President

The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby L. Rush, Ranking Member  
Subcommittee on Energy and Power

The Honorable Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations

## RESPONDING TO COMMITTEE DOCUMENT REQUESTS

*In responding to the document request, please apply the instructions and definitions set forth below:*

### INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions when possible. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

12. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

13. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

14. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

15. In the event that a responsive document is withheld on any basis, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document.

16. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the

Committee, identified in a privilege log provided to the Committee, as described in (15) above, or identified as provided in (10) above.

### **DEFINITIONS**

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.
4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" means and refers to you as a natural person and the United States Environmental Protection Agency (the "EPA") and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the EPA; and includes any other person(s) defined in the document request letter.

8. The term "EPA" refers to the United States Environmental Protection Agency and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the EPA.