

## Statement of Alan Masinter, Clean Air Task Force, Public Hearing on Proposal to Retain the Ozone National Ambient Air Quality Standards



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Good afternoon. My name is Alan Masinter and I am an attorney with the Clean Air Task Force, a nonprofit organization devoted to the protection of the air and climate.

The Clean Air Act requires a primary, health-based standard at a level “requisite to protect the public health” with “an adequate margin of safety” in order to prevent any known or anticipated health-related effects from polluted air. Therefore, the primary ozone standard must be set at a level that not only protects the average member of the population, but also guards against adverse effects in the most vulnerable subpopulations, such as children, the elderly, and others who have particularly high exposures and/or sensitive respiratory symptoms.

The law requires EPA to establish a standard using the best available science, but the best available science includes recent robust epidemiological studies indicating that people experience adverse health responses even at levels below the 70 ppb, and that adverse health responses are larger and more widespread than those detailed in the previous scientific assessment.

And, where there is scientific uncertainty regarding the health effects of ozone, providing for “an adequate margin of safety” requires EPA to err on the side of caution.

Similar issues apply to EPA’s proposal to retain the current secondary standard. The Clean Air Act requires a secondary standard that is “requisite to protect the public welfare from any known or anticipated adverse effects.” Ozone harms plant growth, crop growth, and plant leaves. As EPA recognized in its integrated science assessment (“ISA”), ozone harms people differently from how it harms plants. While humans are harmed by breathing pollution when outdoors – and especially while exercising – plants are damaged cumulatively, over the course of the growing season. EPA’s ISA supports using W126 form for the secondary standard, which takes this difference into account. EPA has provided no sensible rationale for departing from this more scientifically-appropriate measurement for the secondary standard.

In developing this proposal to retain both the primary and secondary standards, EPA has rushed to get it done while depriving itself of needed scientific expertise. There are three issues with the process I’d like to highlight.

First, EPA proceeded despite having a Clean Air Scientific Advisory Committee (“CASAC”) that was illegally constituted, having arbitrarily excluded qualified experts without reasonable grounds – as held this April by *Physicians for Social Responsibility*.<sup>1</sup> EPA cannot lawfully rely on its advice.

Second, compounding the issue of inadequate expertise, EPA also proceeded without an expert review panel that is needed to ensure adequate scientific review – departing from longstanding prior practice.

Third, while depriving itself of needed expertise, EPA has dramatically accelerated the timeline here – permitting less time for the ISA and Policy Assessment (“PA”), and leaving this proposal

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<sup>1</sup> *Physicians for Social Responsibility v. Wheeler*, 956 F.3d 634 (2020).

open for public comment for only 45 days. Reviewing the ISA and PA simultaneously, in particular, risks conflating the science and policy issues for establishing an appropriate NAAQS, and risks letting a desired result – doing nothing – drive the assessment of the science.



EPA should reconstitute CASAC with a legally constituted panel before proceeding, and form an expert review panel of respiratory health experts, to reassess the science and to consider additional respiratory risks and exposures due to the coronavirus pandemic. At the very least, now that the ISA is finalized, EPA should suspend this rulemaking and reopen the PA for public comment and further review.

Thank you for your time.

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