



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

September 2, 2011

Dear Administrator Jackson:

On July 11, 2011, the Environmental Protection Agency (EPA) submitted a draft final rule, "Reconsideration of the 2008 Ozone Primary and Secondary National Ambient Air Quality Standards," for review by the Office of Information and Regulatory Affairs (OIRA) under Executive Orders 13563 and 12866. The President has instructed me to return this rule to you for reconsideration. He has made it clear that he does not support finalizing the rule at this time.

OIRA shares EPA's strong and continued commitment to using its regulatory authorities, including the Clean Air Act (the Act), to protect public health and welfare. Over the last two and a half years, EPA has issued a significant number of rules to provide such protection. We also recognize that the relevant provisions of the Clean Air Act forbid EPA to consider costs in deciding on the stringency of national ambient air quality standards, both primary and secondary.

Nonetheless, we believe that the draft final rule warrants your reconsideration. We emphasize three related points:

1. Under the Act, finalizing a new standard now is not mandatory and could produce needless uncertainty. The Act explicitly sets out a five-year cycle for review of national ambient air quality standards. The current cycle began in 2008, and EPA will be compelled to revisit the most recent standards again in 2013. The new scientific work related to those forthcoming standards has already started (see point 2 below). A key sentence of Executive Order 13563 states that our regulatory system "must promote predictability and reduce uncertainty." In this light, issuing a final rule in late 2011 would be problematic in view of the fact that a new assessment, and potentially new standards, will be developed in the relatively near future.
2. The draft reconsideration necessarily depends on the most recent recommendations of the Clean Air Scientific Advisory Committee (CASAC), which in turn rely on a review of the scientific literature as of 2006. Executive Order 13563 explicitly states that our regulatory system "must be based on the best available science." As you are aware, work has already begun on a new and forthcoming scientific review, "based on the best available science." We urge you to reconsider whether to issue a final rule in late 2011, based on evidence that is no longer the most current, when a new scientific assessment is already underway.
3. Under your leadership, EPA has taken a series of strong and unprecedented steps to protect public health by reducing harmful air pollution in general and ozone in particular. For example, EPA and the Department of Transportation recently finalized the first joint rule reducing air pollution (including ozone) from heavy-duty

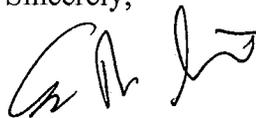
trucks, with overall net benefits of \$33 billion. EPA also recently finalized its Cross-State Air Pollution Rule, which will reduce air pollution (including ozone) and which is projected to prevent 13,000 to 34,000 deaths annually, producing annual estimated net benefits in excess of \$100 billion. In addition, EPA has proposed national standards for mercury and other toxic pollutants; EPA's preliminary estimates, now out for public comment, suggest that these standards will prevent 6,800 to 18,000 premature deaths annually. These standards, whose annual net benefits are currently estimated to exceed \$40 billion, are projected to reduce ozone as well. Cumulatively, these and other recently proposed and finalized rules count as truly historic achievements in protecting public health by decreasing air pollution levels, including ozone levels, across the nation.

As noted, Executive Order 13563 emphasizes that our regulatory system "must promote predictability and reduce uncertainty." Executive Order 12866, incorporated in Executive Order 13563, states that each "agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations" Executive Order 12866 also states that the "Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with . . . the President's priorities" In light of these requirements, and for the foregoing reasons, I am requesting, at the President's direction, that you reconsider the draft final rule.

More generally, the President has directed me to continue to work closely with all executive agencies and departments to implement Executive Order 13563 and to minimize regulatory costs and burdens, particularly in this economically challenging time. The President has instructed me to give careful scrutiny to all regulations that impose significant costs on the private sector or on state, local, or tribal governments.

We look forward to continuing to work with you to create, in the words of Executive Order 13563, a regulatory system that will "protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation."

Sincerely,

A handwritten signature in black ink, appearing to read "Cass R. Sunstein". The signature is fluid and cursive, with a prominent initial "C" and "S".

Cass R. Sunstein