



October 3, 2011

BY EMAIL: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)  
National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

RE: FOIA request regarding ozone NAAQS reconsideration

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), we request on behalf of American Lung Association copies of all records<sup>1</sup> that relate to or discuss:

- a) The attached email of September 2, 2011 from John Larmett;
- b) The “Statement by the President on the Ozone National Ambient Air Quality Standards” reproduced in the above-referenced email;
- c) The Statement by the EPA Administrator reproduced in the above-referenced email;
- d) The attached letter of September 2, 2011 from Cass R. Sunstein to EPA Administrator Lisa Jackson, and any records relating to preparation of that letter;
- e) Any communications to or from, or statements by, officials or staff in the Executive Office of the President, or by the President, relating in any way to the proposal published at 75 Fed Reg. 2938 (Jan 19, 2010)(“National Ambient Air Quality Standards for Ozone”). The request in this subparagraph is limited to records prepared or received after January 19, 2010;
- f) Actual, planned, proposed, or potential action by EPA, the Executive Office of the President, or by officials therein, or by the President with respect to the proposal published at 75 Fed. Reg. 2938 (Jan. 19, 2010). The request in this subparagraph is limited to records prepared or received after July 1, 2010.

You may exclude from the above request: i) any records that are publicly available in EPA docket number EPA-HQ-OAR-2005-0172; ii) any records available to the public on the web sites of EPA or the Executive Office of the President; iii) any materials filed in D.C. Circuit case 08-1200.

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<sup>1</sup> As used throughout this letter, the terms “record” and “records” shall mean all materials in whatever form (handwritten, typed, electronic, or otherwise produced, recorded, reproduced or stored) in EPA’s possession, including, but not limited to, any correspondence, minutes of meetings, memoranda, notes, e-mails, notices, electronic files, tapes and telefaxes.

It may be possible for us to further limit this request if we have a better idea of the nature and scope of the records in your files. Please contact me to discuss this possibility. In addition, to the extent that records responsive to this request are available in a widely-used electronic format (e.g., pdf, excel, Word, or WordPerfect files), we would prefer to receive them in that format, provided that the electronic versions are in comprehensible form.

If you regard any of the requested records to be exempt from required disclosure under FOIA, we request that you disclose them nevertheless, as such disclosure would serve the public interest of educating citizens and advancing the purposes of the Clean Air Act. Such disclosure would also be warranted under the President's memorandum on FOIA at 74 Fed. Reg. 4683 (2009).

This FOIA request is submitted on behalf of the American Lung Association (ALA), a national nonprofit organization dedicated to saving lives by improving lung health and preventing lung disease. ALA requests that you waive all fees in connection with this request pursuant to 5 U.S.C. §552(a)(4)(A)(iii). A fee waiver is justified under EPA's factors governing such waivers, as follows:

*Factor 1. The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote.* The subject of the request plainly concerns the operations and activities of the government, specifically the activities of EPA, the President, and the Executive Office of the President in deciding on action with respect to EPA's proposal of January 19, 2010 to reconsider and revise the national ambient air quality standards (NAAQS) for ozone.

*Factor 2. The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.* The information sought here is likely to be meaningfully informative about actions by the President, EPA, and the Executive Office of the President in reviewing, weighing, and deciding on action with respect to EPA's proposal to reconsider and strengthen the ozone NAAQS. The records sought are specifically those that pertain to this important decision making process. Further, EO 12866 (Oct. 4, 1993) expressly requires public disclosure of much of the information sought here, including "all documents exchanged between OIRA and the agency during the review by OIRA..." Thus, the President has already determined that disclosure of this sort of information is important to public understanding of the government's activities. In addition, the requested information is not already in the public domain. The request expressly excludes information that is already publicly available.

*Factor 3. The contribution to an understanding of the subject by the public is likely to result from disclosure:* The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject. ALA has a long history of promoting public understanding and awareness of the adverse health effects of air pollution, and of the role of government in protecting the public from air pollution, including ozone pollution. ALA carries out these functions by publishing reports on air quality (including its annual "State of the Air" report, which details air pollution threats in communities throughout the nation), by issuing public

comments on government actions proposed or needed to protect air quality, by explaining complex air quality regulatory action (and inaction) to the public, and by providing extensive information on its web site ([lungusa.org](http://lungusa.org)) about air pollution and governmental action needed to address it. ALA also engages in advocacy for strong clean air policies in Congress and before Executive branch officials. Among other things, ALA intends to use the above-requested documents to better inform public officials and the public about governmental action and inaction regarding ozone pollution. As one of the nation's most well-known public health organizations, ALA has proven abilities to disseminate information to large segments of the public, as evidenced by frequent press coverage of its reports and activities. Information about ALA's activities is widely distributed in ALA's published reports, press releases, public comments, media appearances, and on its web site. For all these reasons, an understanding of the subject by the public is likely to result from disclosure to ALA.

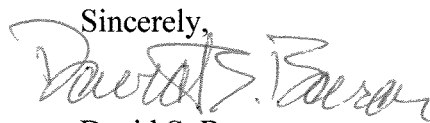
*Factor 4. The significance of the contribution to public understanding:* The public's understanding of the subject in question will likely be enhanced significantly by the disclosure sought here. Other than the very brief statements contained in the attached email and a 9/2/11 court filing by EPA, the public has seen almost no information on the facts, reasoning, and decision-making process that led to the decision to withdraw EPA's January 19, 2010 proposal to reconsider and strengthen the ozone NAAQS. Thus, disclosure of that information (which is sought herein) would plainly enhance public understanding as compared to the level of public understanding before the disclosure.

*Factor 5. The existence and magnitude of a commercial interest:* ALA has no commercial interest in the requested disclosure. As indicated above, ALA is a nonprofit organization that intends to use the requested information for public education and public health advocacy purposes.

For all the foregoing reasons, dissemination of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government. Accordingly, we request that you waive all fees in connection with this request pursuant to 5 U.S.C. §552(a)(4)(A)(iii).

If you find that this request is unclear in any way, or that the number of records responsive to this request is relatively large or difficult to copy, please do not hesitate to call me at 202-667-4500, ext. 5203, to see if I can clarify the request or otherwise expedite and simplify your efforts to comply with it. You can also reach me by email at: [dbaron@earthjustice.org](mailto:dbaron@earthjustice.org).

Thank you for your assistance.

Sincerely,  
  
David S. Baron  
Attorney

From: Larmett.John@epamail.epa.gov [mailto:Larmett.John@epamail.epa.gov]  
Sent: Friday, September 02, 2011 12:33 PM  
To: larmett@aol.com  
Subject: EPA Office of Public Engagement Notice: Statements by President Obama & Administrator Jackson on the Withdrawal of the Draft Ozone National Ambient Air Quality Standards

Dear Stakeholder:

Today, President Obama asked EPA Administrator Lisa P. Jackson to withdraw the proposal of the Ozone National Ambient Air Quality Standards (NAAQS). Administrator Jackson has pledged to revisit the ozone standard, in compliance with the Clean Air Act.

Below are the respective statements of both President Obama and Administrator Jackson issued today by the White House and EPA.

Office of Public Engagement  
Office of External Affairs & Environmental Education  
Office of the Administrator

THE WHITE HOUSE  
Office of the Press Secretary  
FOR IMMEDIATE RELEASE  
September 2, 2011

Statement by the President on the Ozone National Ambient Air Quality Standards

Over the last two and half years, my administration, under the leadership of EPA Administrator Lisa Jackson, has taken some of the strongest actions since the enactment of the Clean Air Act four decades ago to protect our environment and the health of our families from air pollution. From reducing mercury and other toxic air pollution from outdated power plants to doubling the fuel efficiency of our cars and trucks, the historic steps we've taken will save tens of thousands of lives each year, remove over a billion tons of pollution from our air, and produce hundreds of billions of dollars in benefits for the American people.

At the same time, I have continued to underscore the importance of reducing regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover. With that in mind, and after careful consideration, I have requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards at this time. Work is

already underway to update a 2006 review of the science that will result in the reconsideration of the ozone standard in 2013. Ultimately, I did not support asking state and local governments to begin implementing a new standard that will soon be reconsidered.

I want to be clear: my commitment and the commitment of my administration to protecting public health and the environment is unwavering. I will continue to stand with the hardworking men and women at the EPA as they strive every day to hold polluters accountable and protect our families from harmful pollution. And my administration will continue to vigorously oppose efforts to weaken EPA's authority under the Clean Air Act or dismantle the progress we have made.

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FOR IMMEDIATE RELEASE  
September 2, 2011

Statement by EPA Administrator Lisa P. Jackson on the Ozone National Ambient Air Quality Standards

Since day one, under President Obama's leadership, EPA has worked to ensure health protections for the American people, and has made tremendous progress to ensure that Clean Air Act standards protect all Americans by reducing our exposures to harmful air pollution like mercury, arsenic and carbon dioxide. This Administration has put in place some of the most important standards and safeguards for clean air in U.S. history: the most significant reduction of sulfur dioxide and nitrogen oxide air pollution across state borders; a long-overdue proposal to finally cut mercury pollution from power plants; and the first-ever carbon pollution standards for cars and trucks. We will revisit the ozone standard, in compliance with the Clean Air Act.

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

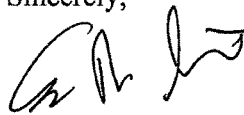
trucks, with overall net benefits of \$33 billion. EPA also recently finalized its Cross-State Air Pollution Rule, which will reduce air pollution (including ozone) and which is projected to prevent 13,000 to 34,000 deaths annually, producing annual estimated net benefits in excess of \$100 billion. 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 large initial "C" and "S".

Cass R. Sunstein