

United States Senate
WASHINGTON, DC 20510

March 10, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator McCarthy:

EPA's recently proposed National Ambient Air Quality Standard (NAAQS) for ozone will likely be the costliest rule the Agency has ever proposed. The November 2014 draft Regulatory Impact Analysis ("draft RIA") estimates that the cost of lowering the standard could range from \$3.9 billion to almost \$39 billion in 2025 (\$2011 dollars) depending on the standard and the assumptions used.¹ While these numbers are high, there are significant reasons to believe that the draft RIA may underestimate the likely true cost to the American public due to a number of questionable assumptions included in the analysis.

Inflated Baseline Controls: EPA's draft RIA estimates only the incremental costs of reducing emissions above a "baseline" level of controls. One way to lower the projected incremental costs is to assume more controls are imposed in the baseline. For instance, EPA assumes in the baseline that the existing ozone standard will be fully implemented, despite the fact that over 225 counties have yet to meet the existing standard. EPA also makes a number of misleading assumptions that other regulations and proposals will be fully implemented, such as CAFE, Tier 3, and the existing source proposal for electric utility generating units ("Clean Power Plan"), greatly underestimating the true cost of compliance with this proposal.

California costs are also calculated separately, further underestimating the true potential cost of compliance of a lowered NAAQS. The draft RIA estimates the annual cost to California alone would be between \$800 million and \$2.2 billion.² Clearly, the rule's estimate of projected costs ignores the very substantial burden the American public has yet to shoulder to meet the existing standard.

Arbitrarily Capping Known Control Costs to \$14,000/ton for NOx and \$15,000/ton for VOCs. (p7-4 of draft RIA): EPA also lowers compliance costs by arbitrarily assuming that costs for known controls are capped.³ Private sector analyses, however, show that EPA is ignoring expensive and politically unpalatable known measures, such as early retirement of stationary sources and replacement of higher emitting mobile sources.

¹ *Regulatory Impact Analysis of the Proposed Revisions the National Ambient Air Quality Standards for Ground-Level Ozone ("RIA")*, November 2014, at 7A-7 to 7A-8

² *Id.* at ES-18

³ *Id.* at 7-4

Focusing on only 2025: While a snapshot of the annualized costs in the year 2025 is illustrative, it does not provide the public with a full understanding of the likely costs of the program and when these costs might peak. Nonattainment designations will be made in 2017 and will be based on nearly-current air quality conditions (i.e., ozone levels in the years 2014-2016). As a result, many more counties will likely be designated as nonattainment in 2017 than the nine counties identified by EPA as still being in nonattainment in 2025. For example at 70 ppb, the high end of EPA's proposed range, approximately 350 counties would violate the lower standard based on current ozone levels.⁴ Many of these counties and the surrounding areas will be forced to initiate expensive local source control programs before 2025, even though EPA estimates only 9 counties will still fail the 70 ppb standard by 2025. This suggests that the costs estimated based only on 2025 conditions will omit costs and, in particular, will omit costs that will occur in earlier years. We believe it would be useful for the public to see the projected costs and benefits in other years as well as the net present value costs of the full program.

Underestimating the cost of unknown controls: One of the most important assumptions used by EPA is the Agency's estimate for the cost of "unknown" controls. At 70 ppb, over 60 percent of the total costs of the program are based on the costs of unknown controls. At 65 ppb, this number jumps to roughly 75 percent of the estimated total costs of the program.⁵ Any assumption regarding the costs of unknown controls will clearly dominate the estimate of total and annualized costs, and yet this is the most uncertain value in EPA's cost analysis.

As in past RIAs, EPA makes the assumption that innovative strategies and new control options not known today will appear in the near future. The problems with this fundamental assumption should not be overlooked. Many counties in California, Texas, and New England have failed to meet the existing standards, despite decades of struggle. The fact these technologies are not yet known given strong incentives dating back to the 1970s raises important questions regarding whether and how quickly these controls will be developed.

EPA's draft RIA not only assumes the technologies will quickly develop, but that they will cost no more on average than the costs of the more expensive emission controls being employed today. This is at odds with EPA's final RIA for the 2008 ozone standard review where EPA evaluated unknown controls using both fixed cost assumptions and a hybrid cost assumption that allowed for gradual increases in costs overtime in line with standard marginal cost data. Unsurprisingly, the hybrid assumption yields higher cost estimates. In the new draft RIA, EPA has dropped the hybrid cost analysis altogether, further lowering its cost estimates.

Ignoring Inflation: EPA also lowers its fixed cost estimates for unknown controls in its new draft RIA (compared to the 2008 RIA) by assuming the same fixed cost estimates for unknown controls but in \$2011 dollars rather than \$2006 dollars. This sleight of hand lowers the assumed fixed costs by another 10 percent or more.

⁴ EPA fact sheet, Ozone By the Numbers, at 2

⁵ RIA at 7A-7 and 7A-8

Ignoring Market Prices: As EPA lowers the standard, more areas in the country, including many in the Northeast and Southeast, will have to adopt California-level controls before facing the uncertainty of unknown controls. Emission trading markets in California and Texas give us a market-based projection of how expensive these controls might actually be. For Houston, the 2013 annualized offset prices for nitrogen oxide (NOx) emissions, a precursor for ozone, was \$97,000 per year. In the California South Coast, annualized offset prices for NOx have averaged over \$106,000.⁶

The American public should be skeptical of EPA's cost estimates. In contrast to the 2008 RIA, EPA's draft 2014 RIA fails to show through whole economy modeling how these costs will be distributed through the economy and what the economic impact of the costs will be. The American public deserves to know more, and we plan to seek answers to these important questions in the days ahead.

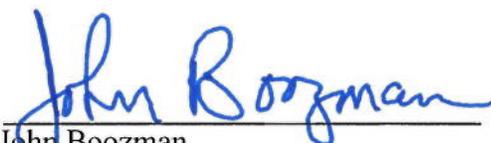
Sincerely,



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Shelley Moore Capito
United States Senator



John Boozman
United States Senator



Roger Wicker
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David Vitter
United States Senator



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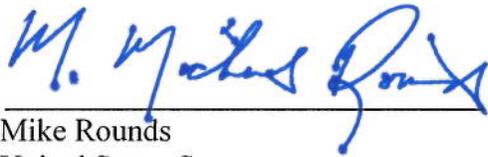
Deb Fischer
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⁶ RIA at 7-24.

Administrator McCarthy

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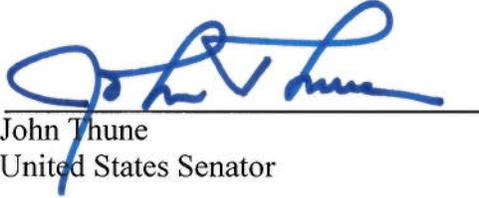
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