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Via Federal eRulemaking Portal

U.S. Environmental Protection Agency
EPA Docket Center
Office of Air and Radiation Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460.

Re: Policy Assessment for Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, External Review Draft (Docket ID No. EPA-HQ-OAR-2015-0072; FRL-8635-03-OAR)

On behalf of the Commonwealth of Kentucky and the sixteen undersigned States, we respectfully submit the following comments in response to the Environmental Protection Agency's (EPA) Policy Assessment for Reconsideration of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter, External Review Draft (Draft Assessment).[1] The Draft Assessment indicates there is no need for reconsidering the NAAQS. We therefore urge the EPA to maintain the current NAAQS, which the EPA studied and reaffirmed just twelve months ago. We also urge the EPA to consider, where permissible, the adverse policy effects of more stringent standards and for the Clean Air Scientific Advisory Committee (the Advisory Committee) to advise the EPA regarding such effects.

[1] *Policy Assessment for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter*, *External Review Draft*, EPA (Oct. 2021), https://perma.cc/KE68-2GTR [hereinafter Draft Assessment].

I. Introduction

The Clean Air Act directs the EPA to propose and promulgate "primary" and "secondary" NAAQS for certain pollutants.[2] As part of this process, the EPA has set primary and secondary standards for two kinds of particulate matter: PM_{10} (air pollution particles with a diameter less than 10 microns) and $PM_{2.5}$ (air pollution particles with a diameter less than 2.5 microns). The EPA's primary standards for PM_{10} and $PM_{2.5}$ must reflect the national air quality levels "requisite to protect the public health."[3] Secondary standards are those "requisite to protect the public welfare from any known or anticipated adverse effects" from pollutants.[4]

The Clean Air Act requires the EPA to establish primary and secondary standards that are no more or less stringent than necessary. Importantly, the Clean Air Act does not require the EPA to establish primary standards that remove all pollutants, or all risks, from the air.[5] Instead, the EPA's criteria must provide only "an adequate margin of safety."[6]

Many factors influence the bounds of an "adequate margin of safety," including the number of people affected, the nature and severity of potential harm, and the uncertainties involved (*e.g.*, conflicting scientific reports[7] about the impact of NAAQS on air pollution levels and on public health).[8] The level of background pollution is another important consideration.[9] And while the EPA may not consider cost as a factor, it may "take account of comparative health risks."[10] For instance, a "rule likely to cause more harm to health than it prevents is not a rule that is 'requisite to protect public health.'"[11]

The requirement that primary standards establish an adequate margin of safety, instead of absolute safety, was intentional. There is no process for removing all pollutants from the air, and there is no method for determining conclusively the

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[2] National Primary and Secondary Ambient Air Quality Standards, 42 U.S.C. § 7409(a).
[3] *Id.* at § 7409(b)(1).
[4] *Id.* at § 7409(b)(2).
[5] *See Lead Industries Assn. v. EPA*, 647 F.2d 1130, 1155 n.51 (D.C. Cir 1980), *cert. denied*, 449 U.S. 1042 (1980).
[6] 42 U.S.C. § 7409(b)(1).
[7] *See infra* section II.B.
[8] *See* Draft Assessment, *supra* note 1, at 1–5.
[9] *See id*. Here, "background pollution" refers to pollutants that are not the result of local emission sources. They can be naturally occurring, or they can be the result of others factors such as emissions from foreign nations. *See* Álvaro Gómez-Losada et al., *Modelling Background Air Pollution Exposure in Urban Environments: Implications for Epidemiological Research*, 106 ENVTL. MODELLING & SOFTWARE 13, 13 (2018).
[10] *Whitman v. American Trucking Assns.*, 531 U.S. 457, 495 (2001) (Breyer, J., concurring in part and in the judgment).
[11] *Id.*

exact impact of air quality on public health.[12] Consequently, as the EPA noted in 2020, the Clean Air Act intended the NAAQS to reflect merely the "best, current scientific information."[13]

Since the 1980s, the EPA has collected and reviewed the science and determined whether current standards are sufficient to protect public health, with an "adequate margin of safety."[14] About twelve months ago, that is exactly what the EPA did when it agreed to continue the standards set by the Obama Administration.[15]

Yet, on June 10, 2021, the Biden Administration announced that it would consider changes to the very standards that the EPA reviewed, debated, and established on December 18, 2020.[16] The Draft Assessment is a step toward making such changes. But these changes lack a legitimate impetus. There have been no groundbreaking scientific discoveries or new threats to public health since December 2020. Instead, the only things that have changed are the occupant of the White House and his views on the NAAQS.[17]

II. Analysis

The EPA got it right in December 2020 when it left unchanged the Obama-era standards. It was correct to retain the standards because America leads the industrialized world in air quality and because the science has not changed since the current standards were established. Therefore, Kentucky and the undersigned States urge the EPA to maintain the current NAAQS. Likewise, we urge the EPA to consider, where permissible, the adverse policy effects of more stringent NAAQS and for the Advisory Committee to advise the EPA regarding such effects.

A. America leads the industrialized world in air quality, so there is no justification for changing the NAAQS.

Fifty years ago, any administration would have been justified in imposing more stringent air quality standards. In the 1970s, poor air quality was a significant

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[12] *See generally* Review of the National Ambient Air Quality Standards for Particulate Matter, 85 Fed. Reg. 82684 (Dec. 18, 2020) (noting conflicting reports on the exact impact of air quality on public health, especially the difficulty in separating air quality's impact from the impact of other factors and in determining the impact of more stringent standards) [hereinafter 2020 NAAQS Review].

[13] *Back-to-Basics Process for Reviewing National Ambient Air Quality Standards* at 1, EPA (May 9, 2018), https://perma.cc/6FFZ-RP8M [hereinafter Back-to-Basics Memo].

[14] 42 U.S.C. § 7409(b)(1).

[15] 2020 NAAQS Review, *supra* note 12.

[16] *Id.*

[17] In 2020, the EPA left unchanged the NAAQS established in 2015 by the Obama-Biden Administration. Now, as president, Biden seeks to undo the very standards crafted by an administration of which he was a leading figure.

problem for millions of Americans.[18] From New York to Los Angeles and from Cleveland to Birmingham, dangerous levels of smog, soot, and other particles clogged our air and our lungs.[19] It is why President Nixon proposed the establishment of the EPA in July of 1970 and why the EPA became operational so soon thereafter.[20]

In 1971, the EPA set its first standard for particle pollution in the air. That standard assessed the "total suspended particles" and permitted up to 260 μg/m3[21] of such particles in a given area over a 24-hour period.[22] By 1987, the EPA had changed its metric[23] for measuring μg/m3 but had dropped the permissible levels to just 150 μg/m3—a 40% drop.[24] Put another way, from 1971 to 1987, the EPA raised one air quality standard by over 40%.

And it worked. In the past forty years, total emissions for the six pollutants measured by the NAAQS have dropped by 71%.[25] In fact, the United States now has some of the highest quality air of any industrialized nation. Our $PM_{2.5}$ levels are approximately five times below the global average.[26] They are six times below Chinese levels.[27] And they are 20% lower than those of France, Germany, and Great Britain.[28] Likewise, between 2000 and 2019, average concentrations of $PM_{2.5}$—the

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[18] *DOCUMERICA: The Environmental Protection Agency's Program to Photographically Document Subjects of Environmental Concern, 1972–1977*, NATIONAL ARCHIVES, https://catalog.archives.gov/id/542493.

[19] *Id.*

[20] The EPA became operational in December 1970. *See Public Papers of the Presidents: Richard Nixon,* 1970, 578–86; *see also Richard Nixon, Reorganization Plan No. 3 of 1970*, EPA.GOV (July 9, 1970), https://archive.epa.gov/epa/aboutepa/reorganization-plan-no-3-1970.html.

[21] The term "μg/m3" means micrograms per cubic meter of air. *See Particulate Matter Introduction*, CT.GOV (Oct. 14, 2020), https://portal.ct.gov/DEEP/Air/Planning/Particulate-Matter/Particulate-Matter-Fact-Sheet.

[22] *Id.*

[23] In the 1980s, the EPA changed the metric from a measurement of total suspended particles ("TSP") to particulate matter levels (PM_{10} and $PM_{2.5}$). Generally, this change moved the EPA away from measuring a broad array of air particles to measuring more specific types and sizes of particulate matter. *See id.*

[24] This standard, now judged by the PM_{10} metric, still stands today. *Timeline of Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS)*, EPA.GOV, https://www.epa.gov/pm-pollution/timeline-particulate-matter-pm-national-ambient-air-quality-standards-NAAQS.

[25] *National Ambient Air Quality Standards for Particulate Matter and Ozone*, HARVARD.EDU (July 15, 2020), https://eelp.law.harvard.edu/2020/07/national-ambient-air-quality-standards-for-pm-and-ozone/.

[26] *Press Release*, *EPA Finalizes NAAQS for Particulate Matter*, EPA (Dec. 7, 2020), https://www.epa.gov/newsreleases/epa-finalizes-NAAQS-particulate-matter [hereinafter EPA NAAQS Press Release].

[27] *Id.*

[28] *Id.*

fine particles that reduce visibility and cause air to appear hazy[29]—fell by 44% in the U.S., while the average concentrations of PM_{10} fell by 46%.[30]

Thus, by the time the EPA reviewed the NAAQS in 2020, many of the air pollution problems of the 1970s had been solved. While New York continues to experience smog and Los Angeles continues to combat wildfire-related soot, the grimy American air of the 1970s is no more. In its stead is some of the cleanest air modern America has ever had—hardly a justification for changing the NAAQS.

B. The available scientific evidence does not call into question the EPA's well-considered 2020 determination to maintain the current PM standards.

To be sure, an agency has the authority to repeal its own regulations.[31] However, this authority is not unlimited. When an agency repeals its own regulations, "such action must be neither arbitrary nor unreasonable."[32] Barely one year ago, the EPA conducted an extensive review which culminated in the 2020 determination that the current PM standards are adequate to protect human health within an adequate margin of safety. For the EPA to take the opposite position now, without any new scientific evidence, is the definition of arbitrary and unreasonable agency action.

1. The EPA conducted an extensive review beginning in 2014 to reach the well-supported conclusion that the current standards protect human health.

The Clean Air Act requires the EPA to review the NAAQS every five years.[33] The recently-concluded review began in December 2014, when the EPA issued a call for information regarding the NAAQS.[34] Shortly after, the EPA held a public workshop including internal and external subject matter experts who informed its review planning.[35] The Advisory Committee provided advice, supplemented by the Particulate Matter Review Panel, on the resulting integrated resource plan that was also discussed at two public teleconferences.[36]

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[29] *Fine Particles (PM 2.5) Questions and Answers*, NY.GOV (Feb. 2018), https://www.health.ny.gov/environmental/indoors/air/pmq_a.htm.
[30] EPA NAAQS Press Release, *supra* note 26.
[31] *U.S. Lines, Inc. v. Federal Maritime Commission*, 584 F.2d. 519, 526 n. 20 (D.C. Cir. 1978).
[32] *Nader v. Bork*, 366 F.Supp. 104, 108 (D.D.C. 1973).
[33] 42 U.S.C. § 7409(d).
[34] Notice of Workshop and Call for Information on Integrated Science Assessment for Particulate Matter, 79 Fed. Reg. 71764 (Dec. 3, 2014).
[35] *Id*.
[36] 2020 NAAQS Review, *supra* note 12, at 82689.

In May 2018, the EPA announced its intention to ensure that any necessary revisions to the standards were finalized by December 2020.[37] Admirably, the EPA adhered to this timetable. The EPA released a draft integrated science assessment (ISA) in October 2018,[38] and the Advisory Committee reviewed the draft ISA at both a public meeting[39] and a public teleconference.[40] The EPA considered the comments received at these meetings in its final ISA.[41]

The EPA released a draft policy assessment in September 2019.[42] The EPA solicited comments from both the Advisory Committee and the public.[43] The current standards received great support. Specifically, the Advisory Committee recommended maintaining the 24-hour $PM_{2.5}$ and PM_{10} standards and the current secondary standards.[44] The Advisory Committee did not reach consensus on the annual $PM_{2.5}$ standard.[45] In light of this advice, the EPA proposed maintaining all of the primary and secondary PM standards.[46]

On April 30, 2020, the EPA published this proposed decision in the Federal Register for public comment.[47] It held several virtual meetings on the proposal in May 2020.[48] It also responded to all significant comments.[49] Importantly, the EPA considered new scientific studies cited by commenters to determine "whether they warranted reopening the review."[50] The EPA ultimately found that they did not. The new studies, it found, "do not materially change any of the broad scientific conclusions regarding the health and welfare effects of PM in ambient air."[51]

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[37] *Back-to-Basics Memo*, s*upra* note 13.
[38] Integrated Science Assessment for Particulate Matter (External Review Draft), 83 Fed. Reg. 53471 (Oct. 23, 2018).
[39] Notification of a Public Meeting of the Chartered Clean Air Scientific Advisory Committee, 83 Fed. Reg. 55529 (Nov. 6, 2018).
[40] Notification of a Public Teleconference of the Chartered Clean Air Scientific Advisory Committee, 84 Fed. Reg. 8523 (Mar. 8, 2019).
[41] 2020 NAAQS Review, *supra* note 12, at 82689.
[42] Release of a Draft Document Related to the Review of the National Ambient Air Quality Standards for Particulate Matter, 84 Fed. Reg. 47944 (Sept. 11, 2019).
[43] 2020 NAAQS Review, *supra* note 12, at 82690.
[44] *Id*.
[45] *Id*.
[46] *Id*.
[47] Review of the National Ambient Air Quality Standards for Particulate Matter, 85 Fed. Reg. 24094 (Apr. 30, 2020).
[48] Public Hearing for the Review of the National Ambient Air Quality Standards for Particulate Matter, 85 Fed. Reg. 26635 (May 5, 2020).
[49] 2020 NAAQS Review, *supra* note 12, at 82690.
[50] *Id*.
[51] *Id.* at 82691.

Upon evaluating the vast amount of relevant information, the EPA maintained the current standards without revision.[52] Yet now, less than one year after this careful and deliberate determination—and entirely outside of the normal review cycle—the EPA seeks public comment on "whether to retain or revise the existing PM NAAQS."[53]

2. The scientific literature in the Draft Assessment does not provide adequate grounds to reconsider the EPA's 2020 determination.

The EPA circulated the Draft Assessment with its request for comments.[54] The Draft Assessment reviews the scientific analyses discussed by the December 2020 determination as well as "newly available" scientific information covered in a draft supplement.[55] A thorough review of the Draft Assessment shows that this "new" information does not support reconsidering the December 2020 determination.

The Draft Assessment begins with the disclaimer: "Much of the information in this Draft Assessment is drawn directly from information included in the 2019 ISA and the 2020 [Draft Assessment]."[56] After a detailed overview of the analytical steps involved in the recently-concluded review, the Draft Assessment further underscores the narrow scope of the 2021 draft ISA Supplement. Specifically, the 2021 draft ISA Supplement (draft 2021 ISA) "does not encompass the full multidisciplinary evaluation presented within the 2019 ISA that would result in weight-of-evidence conclusions on causality (*i.e.*, causality determinations)."[57] This means that the causality designations, which the new information cited in the draft 2021 ISA is intended to inform, have not undergone the same scientific scrutiny endured by the causality evaluations in the 2019 ISA. Even more important, the scientific information in the draft 2021 ISA does not come to a different conclusion than did the scientific information in the 2019 ISA.

In discussing the $PM_{2.5}$ health effects, the draft 2021 ISA notes that it focused on evidence where the 2019 ISA already found a causal relationship.[58] But the studies evaluated in the draft ISA Supplement are "[c]onsistent with the studies evaluated in the 2019 ISA" in their evaluation of $PM_{2.5}$ health effects.[59] The Draft Assessment

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[52] *Id.* at 82684.
[53] Release of the Draft Policy Assessment for the Particulate Matter National Ambient Air Quality Standards, 86 Fed. Reg. 56263 (Oct. 8, 2021).
[54] *See* Draft Assessment, *supra* note 1.
[55] *Id.* at 1-1.
[56] *Id.* (citations omitted).
[57] *Id.* at 1-17.
[58] *Id.* at 3-16.
[59] *Id.* at 3-26–27.

also notes that the new research has "not altered our understanding of human populations at risk of health effects from $PM_{2.5}$ exposures."[60]

Moreover, the new studies on human exposure all evaluated levels of $PM_{2.5}$ exposure far in excess of the current standards.[61] The Draft Assessment also acknowledges that its interpretation of epidemiology study results is "complicated by the relatively sparse data available at the lower end" of the $PM_{2.5}$ distribution.[62] Theoretical models also perform poorly in predicting how human health is affected by low quantities of $PM_{2.5}$. The Draft Assessment, when discussing the models used to estimate $PM_{2.5}$ exposure, admits that "poorer model performance often coincide[s] with relatively low ambient $PM_{2.5}$ concentrations."[63]

Next, the Draft Assessment does not even attempt to engage in new analysis relating to PM_{10} levels. It admits that "the draft [2021] ISA . . . does not include an evaluation of studies for" PM_{10} levels.[64] Just like the earlier review, the Draft Assessment finds that "the limited information on the potential for confounding by copollutants and the limited support available for the biological plausibility of health effects following $PM_{10\text{-}2.5}$ exposures also continue to contribute to uncertainty in the $PM_{10\text{-}2.5}$ health evidence."[65] The Draft Assessment specifically notes that there is no certainty to conclude that long- or short-term $PM_{10\text{-}2.5}$ exposure has negative health effects on humans below the current standards.[66] Given the continuing uncertainty, it would be entirely unreasonable for the EPA to abruptly reverse the well-considered 2020 determination, which was the product of a six-year review.

In fact, the Draft Assessment specifically states that it does not support reconsideration of the PM_{10} standard. It states, "the available evidence in this reconsideration of the 2020 final decision supports retaining the current standard."[67]

The Draft Assessment reaches the same conclusion regarding both the $PM_{2.5}$ and the PM_{10} secondary standards. It says: "We have not identified new information available since the completion of the 2020 review in this reconsideration of the 2020 final decision that would challenge" the secondary standard determination.[68] The Draft Assessment's analysis of both climate effects and materials effects further

[60] *Id.* at 3-50.
[61] *Id.* at 3-58–60.
[62] *Id.* at 3-184.
[63] *Id.* at 3-126.
[64] *Id.* at 4-5-6.
[65] *Id.* at 4-10.
[66] *Id.*
[67] *Id.* at 4-18.
[68] *Id.* at 5-47.

supports the conclusion that the 2020 determination should remain in place, as "the available information does not call into question the adequacy of protection provided by the current standards."[69]

Overall, the Draft Assessment is clear: there is scant new evidence to support reconsidering the 2020 determination. The EPA should drop this ill-considered review of its 2020 determination. Its reconsideration here is certainly not supported by any new scientific evidence. It is therefore unwarranted, unnecessary, and unreasonable.

3. The EPA should not confront a particularized problem with a national, one-size-fits-all solution that will impose uneven burdens on the States.

The Draft Assessment includes a discussion of the sources of national $PM_{2.5}$ emissions. Only certain PM emissions occur due to human activity. Stationary fuel combustion accounts for only 11% of $PM_{2.5}$ emissions.[70] Mobile sources and industrial processes contribute 5% each, with agriculture contributing another 14%.[71] The largest primary source of $PM_{2.5}$ emissions—by far—is fires, especially wildfires and prescribed fires.[72] But this is not a national problem that would require a national solution. This is a local problem that requires a local solution.

The Draft Assessment notes that at locations where the PM is below current standards, "the highest 2-hour concentrations measured almost never occur outside of the period of peak wildfire frequency. Most of the sites measuring these very high concentrations are in the northwestern U.S. and California, where wildfires have been relatively common in recent years."[73]

C. Changing the NAAQS affects more than air quality.

Changes to the NAAQS do not occur within a vacuum. Any movement in these standards necessarily prompts other changes and actions.[74] Those actions have consequences. For instance, one study noted that from 1972-1987, counties targeted

[69] *Id.* at 5-48.
[70] *Id.* at 2-4–5.
[71] *Id.*
[72] *Id.* (noting that fires account for 43% of $PM_{2.5}$ national emissions and explaining that "[f]ires include wildfires, prescribed fires, and agricultural fires, with wildfires and prescribed fires accounting for most of the fire-related primary PM2.5 emissions nationally").
[73] *Id.* at 3-62–63 (parentheticals omitted).
[74] *See, e.g.,* Ilya Shapiro & David McDonald, *Regulation Uber Alles: How Governments Hurt Workers and Consumers in the New New Economy*, 2017 U. CHI. LEGAL F. 461, 463 (2017) (noting how changing the NAAQS produces costs that arise directly, such as when PM standards mandate new filtration standards, and indirectly, such as when regulations lead to layoffs, decreased hiring, and reduced investment in capital stock).

by Clean Air Act regulations lost almost 600,000 jobs.[75] Likewise, a 2019 study looked at counties impacted by the NAAQS and concluded that the data suggested "environmental regulation may have affected employment not by reducing output, but perhaps by inducing firms to change their production technology in a way affecting labor intensity."[76] As we know, "change in production technology" is often just another way of saying "abandon coal." And any regulatory scheme that induces firms to swap coal-generation for some other power source has a disparate impact on Kentucky. This is because Kentucky has the second-highest number of coal workers in the United States[77] and because Kentucky's coal workforce is concentrated in rural—and often impoverished—areas where other jobs are either unavailable or inaccessible.

Eastern Kentucky—one of the state's largest coal producing regions—is one such area. In 2011, there were around 14,000 coal jobs in Eastern Kentucky; but, by the third of quarter of 2021, there were just 2,619 coal jobs left in this region.[78] This is a decrease of over 80%, and it has had serious consequences. Kentucky's Fifth Congressional District, which encompasses mines producing about one-third of Kentucky's coal,[79] has the second-lowest median income of any congressional district in the nation.[80] The district has an average poverty rate of 27.3%, which is over twice the national average of 12.3%.[81] Beyond the economic impact, the loss of these jobs also has produced serious health consequences. For instance, in Hazard, Kentucky—one of the largest coal towns in the Eastern Kentucky region—high unemployment has been cited as a cause of opioid addictions and a Hepatitis-C outbreak.[82]

These serious consequences to public health should be part of the EPA's risk assessment. The NAAQS must be standards that "are requisite to protect the public health."[83] To make this judgment, the EPA may "take account of comparative health

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[75] Michael Greenstone, *The Impacts of Environmental Regulations on Industrial Activity: Evidence from the 1970 and 1977 Clean Air Act Amendments and the Census of Manufactures*, 110 J. POL. ECON. 1175, 1176 (2002) (estimating the counties also lost $37 billion in capital stock and $75 billion of industrial output).

[76] Glenn Sheriff et al., *How Did Air Quality Standards Affect Employment at US Power Plants? The Importance of Timing, Geography, and Stringency*, 6 J. ASSOC. ENVIRON RESOUR. ECON. 111, 126 (2019), https://perma.cc/Q454-FS5S.

[77] *Kentucky Coal Facts,* Kentucky Energy and Environment Cabinet 17 (2017), https://perma.cc/P5Z4-J6JE.

[78] Bill Estep, *'Noticeable impact.' Coal jobs and production up in Eastern Kentucky*, HERALD LEADER (Nov. 18, 2021), https://perma.cc/2PX2-MQRP (noting that this is actually an increase from the third quarter in 2020).

[79] *Kentucky Coal Facts, supra* note 77.

[80] Greg Giroux, *Rich, poor, young, old: Congressional districts at a glance,* Bloomberg Gov't (Sept. 15, 2017), https://perma.cc/9G2T-Q3M3.

[81] *Congressional District 5, KY.*, Data USA, https://perma.cc/T866-2HC4.

[82] Parija Kavilanz, *In a small Kentucky coal town, joblessness leads to a health crisis*, CNN (Nov. 8, 2017), https://perma.cc/TN8A-856Z.

[83] 42 U.S.C. § 7409(b).

risks."[84] According to Justice Breyer, writing in concurrence, "That is to say, [the EPA] may consider whether a proposed rule promotes safety overall. A rule likely to cause more harm to health than it prevents is not a rule that is 'requisite to protect the public health.'"[85]

And, while § 7408(b)(1) of the Clean Air Act does not allow the "costs of achieving [the] standard" to be included in the "initial calculation,"[86] this does not mean the EPA is required "to eliminate every health risk, however slight, at any economic cost, however great, to the point of hurtling industry over the brink of ruin, or even forcing deindustrialization."[87] Indeed, the purpose of the Clean Air Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and *the productive capacity of its population.*"[88] This purpose shows that Congress, like the Supreme Court, recognizes that there are "unquestionably" health "losses" that result from "closing down whole industries and thereby impoverishing the workers and consumers dependent upon those industries."[89]

Therefore, it is imperative that the Advisory Committee "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance" of the standard.[90] Such information will also aid the States in making informed decisions about "which abatement technologies are most efficient, and most economically feasible."[91] To neglect the impact changing the NAAQS will have on employment in the States is to ignore a very real and serious harm to public health.

III. Conclusion

For these reasons, the Biden Administration should maintain the current NAAQS, which the EPA studied and reaffirmed just twelve months ago. For these same reasons, Kentucky and the undersigned States urge the EPA to consider, where permissible, the adverse policy effects of more stringent standards and for the Advisory Committee to advise the EPA regarding such effects. We look forward to your response.

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[84] *American Trucking*, 531 U.S. at 495 (Breyer, J., concurring in part and in the judgment).
[85] *Id.*
[86] *Id.* at 465 (majority opinion).
[87] *Id.* at 494 (Breyer, J., concurring in part and in the judgment) (cleaned up).
[88] 42 U.S.C. § 7401(b)(1) (emphasis added).
[89] *American Trucking*, 531 U.S. at 466 (majority opinion).
[90] 42 U.S.C. § 7409(d)(2)(C)(iv).
[91] *American Trucking*, 531 U.S. at 470.

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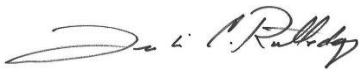

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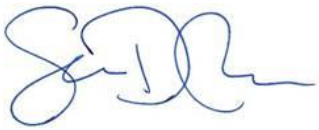

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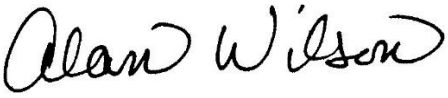

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