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EPA's Proposed Air Quality Standards Will Cause Permitting Gridlock Across Our Economy: U.S. Chamber of Commerce Report Addressing PM2.5 National Ambient Air Quality Standard

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The United States Chamber of Commerce ("Chamber") issued a November 2023 report titled:

EPA's Proposed Air Quality Standards Will Cause Permitting Gridlock Across Our Economy ("Report")

The *Report* puts forth its belief that the United States Environmental Protection Agency ("EPA") proposed fine particulate matter (PM2.5) National Ambient Air Quality Standard ("NAAQS") will:

... cause permitting gridlock across our economy.

Particulate matter is a generic term for a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes. It is composed of two major components.

Primary particulates or soot are emitted directly into the atmosphere. Secondary particulates can also be formed through a secondary process. They might be formed from condensation of high-temperature vapor from vapors generated as a result of chemical reactions involving gas-based precursors.

Particulates designated PM2.5 typically consist of sulfates, nitrates, elemental carbon, organic carbon, compounds or metals. Because of their small size, these particulates can remain in the air for significant periods of time.

Sections 108 and 109 of the Clean Air Act require EPA to identify air pollutants utilizing certain criteria and set NAAQS for each. Particulates are one of the six air pollutants currently designated as criteria air pollutants and subject to NAAQS. Section 109 requires that EPA promulgate primary NAAQS for the pollutants identified under Section 108.

Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria and allowing an adequate margin of safety, are requisite to protect the public health." The margin of safety requirement addresses the uncertainties associated with the inconclusive scientific and technical information available, as well as to provide a reasonable degree of protection against the adverse effects that may not have been discovered.

Section 109(d)(1) of the Clean Air Act mandates a periodic review of each NAAQS. Depending on the results of the review, EPA must determine whether the existing air quality criteria and NAAQS must be revised. EPA's review of the PM2.5 is an example of this review process.

EPA announced in 2022 that it was reconsidering the Trump Administration's prior decision to retain the current PM2.5 NAAQS. The federal agency subsequently issued a proposed rule soliciting comments on strengthening the annual PM2.5 NAAQS. This was stated to be driven by EPA's belief that it reflects the latest health data and scientific evidence.

Note that the states are primarily responsible for ensuring attainment and maintenance of a NAAQS once the EPA has established or revised them. Each state is therefore required to formulate, subject to EPA approval, an implementation plan (i.e., SIP) designed to achieve each NAAQS.

The SIPs will contain the measures and actions the state proposes to undertake to attain each NAAQS.

The Chamber *Report* argues that EPA ignored the 2023 wildfires in its proposed rule. It states that the 2023 wildfires would increase the number of counties impacted by a revised PM2.5 NAAQS by 50 percent. The lower PM2.5 standard is stated to threaten:

... investment in manufacturing and critical infrastructure projects, even those made possible by the Infrastructure Investment and Jobs Act, the Chips and Science Act, and the Inflation Reduction Act.

Potential impacts of what is described as placing as much as 30 percent of all counties in the United States in "permitting gridlock" are stated to include:

- Block permitting of new manufacturing facilities and associated good-paying jobs, pushing investment overseas.
- Prevent building roads, bridges, and other infrastructure funded by the bipartisan infrastructure bill to ease congestion.
- Require mitigation from homeowners, restaurants, and small businesses putting burdens on all Americans.
- Place burden on the private sector despite fires being the main PM2.5 emissions source.

The three components of the *Report* include:

- Calculation of Values EPA Would Use To Identify Nonattainment Areas
- Comparing Results Across EPA Regions and Core-Based Statistical Areas
- Headroom, Permitting, and New Build Challenges

The *Report* requests that EPA suspend what it describes as a discretionary rule and consider unintended consequences and unnecessary burdens that would be placed on all Americans sector despite wildfires being the main PM2.5 source.

The environmental organization Earthjustice in a December 4th blog post titled "Chamber of Commerce's Dubious Analysis of Clean Air Rules is Wrong" criticizes the *Report*, arguing:

- Polluters' claims about costs are legally irrelevant for setting these clean air standards.
- The current standards allow soot levels that kill people; older Black people are especially harmed. Stronger standards could save 16,000 lives annually.
- Polluters have been pushing the same tired, sky-is-falling arguments forever. And they've been wrong forever.
- The Chamber's claims about the scope of nonattainment designations are wrong because the Chamber ignores that the high soot levels from wildfires can be thrown out from regulatory decisions. The Chamber makes several other errors, too.
- Construction permitting simply doesn't work the way the Chamber pretends it does. As reality and the law itself prove, the Clean Air Act allows for economic growth, even in polluted areas.
- Polluters can do better at controlling their air pollution.

A link to the *Report* can be found [here](#) and a link to the Earthjustice document [here](#).