Statement of Chairman Lamar Smith (R-Texas)
Hearing on "Background Check: Achievability of New Ozone Standards"

Chairman Smith: Today's hearing comes at a critical time. The Environmental Protection Agency (EPA) is now reviewing the science that it will use to determine whether to revise or retain the National Ambient Air Quality Standards for ozone.

This decision has significant implications that will drive regulatory requirements across the country and will have a significant impact on the economy. In 2010, the EPA itself estimated that revised ozone standards could impose compliance costs of $90 billion.

As we will hear from today's witnesses, the Agency is now considering setting the NAAQS either at, or below, naturally occurring background levels in many parts of the country. This means two things: First, these areas will be out of compliance with the Clean Air Act through no fault of their own. And second, with no way to comply, these areas will face significant regulatory hurdles – with little to no environmental benefit.

A nonattainment designation under the Clean Air Act has serious consequences.   Additional permitting and compliance obligations could halt any business expansion or new economic development. And with limits on federal highway funding, nonattainment areas would also suffer direct federal sanctions that will harm their ability to make critical infrastructure investments.

The effects could be devastating. Looking at EPA's monitoring data, we see that if EPA lowers the ozone standards to 60 parts per billion, over 90 percent of the U.S. population could live or work in a nonattainment area. Many communities still struggle to meet the standards that were set in 2008. In these tough economic times, tighter regulations would put an additional burden on the backs of hard-working American families. Businesses and communities across the country protested EPA's efforts to tighten these standards in 2010. And such concerns eventually forced President Obama to withdraw the proposal – a decision that is best remembered by former White House Chief of Staff Bill Dailey's asking, "What are the health effects of unemployment?"

I am once again concerned that without transparency, the EPA has incentive to further inflate the health benefit claims associated with tighter ozone standards. And alarmingly, the agency may exaggerate benefits using undisclosed data with highly questionable results.

For two years this Committee has asked EPA for access to the data that supports two federally-funded studies: the "Cancer Prevention Study" and the "Harvard Six Cities Study." This data's significance goes well beyond the ozone standards we now consider. It forms the basis for nearly all benefit claims from Clean Air Act rulemaking in this Administration and a disproportionate share of overall federal regulatory benefit claims.

In other words, the EPA has refused to provide the data that supports a majority of regulatory benefit claims. And the EPA has repeatedly failed to respond to Congressional requests to make the underlying data publicly available.

To the extent that any information has been provided, it contains significant gaps that make full replication and validation of the studies' original results impossible. Further, these studies are decades old and have not been comprehensively updated. Even the National Research Council in 2004 cautioned that these studies, "have little use for decision making." That the agency now attempts to use this data set to justify new onerous regulations is unjustified.

Today I will send a letter to Acting EPA Administrator Bob Perciasepe cautioning the agency not to rely on studies based on these data in the ozone rulemaking. I am also, once again, asking the agency to release the underlying data in a manner that is sufficient for independent analysis. If the agency continues to ignore this request, the Committee will be forced to resort to formal action to obtain its release.

###