

2018 POLICY BRIEF

EPA MOVES FORWARD WITH 2015 OZONE RULE

QUICK FACTS

- Under the Clean Air Act (CAA), states and counties serve as both the regulator and regulated entity of clean air and are responsible for ensuring that the CAA goals are achieved and constituents are protected
- 227 counties (called “nonattainment counties”) are currently regulated under ozone air quality standards. Under a 70 ppb standard, county nonattainment designations are expected to rise
- Under the Clean Air Act, National Ambient Air Quality Standards (NAAQS) must be reassessed every five years.

ACTION NEEDED:

Urge your members of Congress to support continued efforts to delay the new National Ambient Air Quality Standards (NAAQS) for Ozone until after the 2008 ozone standards are fully implemented and analyzed for impact.

BACKGROUND:

Finalized in October 2015, the new ozone NAAQS tightened the current ozone standard of 75 parts per billion (ppb), last set in 2008, to 70 ppb. While final, the 2015 rule has not been implemented nationally. Through NAAQS, the agency is required to work with the states to identify those counties in non-attainment – that is, counties with ozone concentrations above 70 ppb; this process can take several years. For example, even though the 75 ppb ozone standard was finalized in 2008, it was only fully implemented nationally in the past several years due to lawsuits and the lengthy CAA consultation process. And, since NAAQS uses air pollution data over a three-year period to determine non-attainment, there is no available data to measure how the 2008 standards have worked to reduce ozone pollution.

In November 2017, the U.S. Environmental Protection Agency (EPA) released a partial list of 2,646 counties that meet the 2015 standards for ground level ozone or are not classifiable. Affected states containing the areas not in attainment – about 420 counties – were notified by the EPA in December 2017 on their intended recommendations, and were given 120 days to provide additional information for the EPA to consider before making final designation decisions. The agency plans to release the final list of counties in nonattainment by April 30.

State are required to submit infrastructure and transportation state implementation plans (SIPs) for nonattainment counties by late 2018. Barring any lawsuits, the 2015 ozone rule should be implemented nationally soon afterwards.

Ozone designations can have a significant impact on county governments. 227 counties are currently regulated under ozone air quality standards. Under the new 70 ppb standard, the number of impacted counties is expected to increase.

WHAT IS OZONE:

Ozone is one of the six air pollutants regulated under the Clean Air Act’s (CAA) NAAQS program. Under the CAA, EPA is required to reassess NAAQS every five years. The standards apply to outdoor (ambient) air quality and are intended to protect public health, the environment and prevent damage to crops, plants, property and wildlife.

Primarily known as a summertime pollutant, ozone forms when sunlight reacts with pollutants such as volatile organic compounds emitted from chemical plants, gasoline pumps, oil-based paints, and auto body and print shops. Sources of nitrogen oxides



(NOx) include power plants, industrial facilities and motor vehicles. However, over the past decade, high ozone levels have also been observed in winter months near oil and gas operations in Colorado, Utah and Wyoming.

Ground level ozone, also known as smog, is considered “bad” ozone. According to the American Lung Association, ozone is the most widespread air pollutant and causes coughing, wheezing, asthma attacks, heart problems and increases the risk of hospital admissions and emergency room visits, as well as the risk of premature death. Tightening the ozone standard is supported by a number of environmental and health groups including the American Lung Association, American Public Health Association and the National Association of County and City Health Officials.

However, a tighter standard also comes with a more expensive price tag for industries, states and local governments who are responsible for implementing existing and new standards.

WHY OZONE DESIGNATIONS MATTER TO COUNTIES:

Under the Clean Air Act (CAA), states and counties serve as both the regulator and regulated entity of clean air and they are responsible for ensuring that the CAA goals are achieved and our constituents are protected. Under the new standard, hundreds of counties would fail to meet the more stringent requirements and would be designated as in nonattainment status. This designation can have negative effects on local economies, impacting everything from transportation projects to job growth. Local governments own a large portion of the nation’s public road miles, and many transportation projects may have to be reconsidered as the ozone standard is tightened. Transportation conformity is required by the CAA for all areas designated as in nonattainment or in maintenance for transportation-related activities—including transportation plans, transportation improvement programs and highway and transit projects—and must be consistent with the state implementation plan (SIP) for that pollutant. Transportation conformity determinations are required for any transportation project that receives federal funding dollars. This can be time-consuming and expensive.

Finally, a more stringent ozone standard challenges local governments’ ability to increase economic development within their regions. Areas designated as in nonattainment can have a more difficult time attracting industry to their counties due to concerns that permits and other approvals will be too expensive or even impossible to obtain. Counties have lost businesses to other areas due to nonattainment designations. Finally, some companies are changing or delaying plans for building new facilities in areas that may be designated as nonattainment. A more stringent ozone standard will adversely impact local governments’ ability to strengthen its revenue base while creating jobs and providing core services to its residents.

MOVING FROM NON-ATTAINMENT TO ATTAINMENT:

Even if a nonattainment county meets the standards in a couple of years, it is not taken off of the designation list. Instead, it is put into a “maintenance plan” for 10 years. “Maintenance,” while not as stringent as other non-attainment designations, still includes requirements such as emissions budgets, transportation conformity requirements and commitments to implement contingency measures. It is very likely that within those 10 years, the ozone standard will again be tightened, thus putting the county back into non-attainment.

As many counties continue to struggle to meet the ozone standard of 75 ppm set in 2008, NACo previously called on the Obama Administration and on Congress to delay implementation of the new 70 ppm rule until counties are given sufficient time to meet the previous standard and assess whether the 2008 standard is working. NACo will continue to work with Congress and the Trump Administration to craft clear, concise and workable rules that take into account the role of counties as key regulatory partners with the federal government.

For further information, contact: Julie Ufner at 202.942.4269 or jufner@naco.org



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