

# Ozone/Clean Air Act: EPA Staff Proposal Retains Current Primary and Secondary National Ambient Air Quality Standards

11/05/2019

The United States Environmental Protection Agency (EPA) on Halloween published a draft policy assessment recommending that the current National Ambient Air Quality Standards (“NAAQS”) of 70 parts per billion (ppb) be retained.

The policy assessment will be subject to public comment through December 16, 2019.

Concurrent with the public comment opportunity, the policy assessment is also being reviewed by the Clean Air Scientific Advisory Committee (CASAC). CASAC will debate the proposal in Cary, NC for three days in early December.

The Clean Air Act uses a two-pronged approach to air pollution control. first prong involves setting ambient air quality standards for a limited number of air pollutants. Sections 108 and 109 of the Clean Air Act require that EPA identify air pollutants utilizing certain criteria and set NAAQS for each. states are then required to develop plans to ensure that its air quality controls meet the various NAAQS.

The ozone NAAQS were last revised in 2015. At that time, the prior administration revised the primary and secondary ozone NAAQS from 75 ppb to 70 ppb. Per usual, there were interested parties on both sides advocating for a different outcome. Several environmental, ecological, and health advocacy groups argued that the NAAQS should be tightened to a level as low as 60 ppb to truly protect from the negative effects of exposure. On the other side, industry groups supported retaining the 75 ppb NAAQS. They expressed a concern that tightening the NAAQS would jeopardize state’s abilities to attain the standard. If so this was stated to risk economic certainty by potentially subject non-attaining states to tougher air quality standards.

The State of Arkansas joined nine other states and a number of industry groups in suing EPA to challenge the 2015 ozone NAAQS as being too strict and unattainable. The challenge was unsuccessful, with the U.S. Court of Appeals DC Circuit upholding the primary NAAQS and remanding the secondary standard to EPA for further evaluation. The court indicated the secondary standard’s value and form was not adequately evaluated or supported by EPA in the 2015 rulemaking and suggested it might warrant tightening.

EPA’s October 31, 2019 draft policy assessment does not address the DC Circuit’s remand of the secondary standard in any great detail. It merely references the court action.

The next step in the process, once the policy assessment is finalized, is for EPA to propose a rule to either retain or tighten the NAAQS standards. By statute, EPA must evaluate the NAAQS every five years. In this

current process, EPA must finalize the ozone NAAQS update by October 1, 2020. By most accounts, EPA will not meet its deadline.

A link to the draft policy assessment can be found [here](#).