

Ozone/Clean Air Act: NESCAUM Comments on U.S. Environmental Protection Agency Proposal to Retain Current National Ambient Air Quality Standard



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The Northeast States for Coordinated Air Use Management (“NESCAUM”) submitted October 1st comments on the United States Environmental Protection Agency’s (“EPA”) proposal titled:

Review of the Ozone National Ambient Air Quality Standards, Proposed Action (“Ozone Proposal”)

The Ozone Proposal is found at 85 Fed. Reg. 49830-49917 (August 14, 2020).

The Ozone Proposal would leave in place the ozone National Ambient Air Quality Standards (“NAAQS”) promulgated by the Obama Administration in 2015.

NESCAUM describes itself as the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

Ozone is an irritant gas. It is not emitted by any particular source and is, therefore, a secondary air pollutant. The air pollutant is formed in the atmosphere in the presence of sunlight and heat from other precursor air pollutants including nitrogen oxide and hydrocarbons. The photochemical reactions can vary because they are initiated by natural conditions such as sunlight and temperature which can, obviously, change. As a result, the rate of formation can differ on an hourly, daily, or seasonal basis.

Ozone was designated many years ago pursuant to the Clean Air Act 108/109 NAAQS review process as a criteria air pollutant. The Clean Air Act requires that EPA periodically review each NAAQS to determine, based on evolving science, etc., if it should be revised.

Once a NAAQS is established, the states are required to develop and implement state implementation plans (“SIPs”) to ensure that its air quality control regions met the NAAQS. As a result, once EPA has established a NAAQS, each state is required to formulate, subject to EPA approval, SIPs designed to achieve each standard. The SIPs will contain the measures and actions the state proposes to undertake to attain each NAAQS.

A change in a NAAQS may require a revision in the SIP. The SIPs and/or revisions must be adopted pursuant to public notice and hearing and include various substantive requirements.

By way of introduction, NESCAUM notes that a wide range of standards are tied to the ozone NAAQS. It, therefore, states that:

. . . failure to adopt adequate NAAQS significantly hampers states' abilities to protect the health and welfare of their residents. A protective national standard is particularly essential for ozone because ambient levels of that pollutant are strongly influenced by interstate transport of ozone and its precursors. States cannot achieve clean air within their borders without national requirements that limit interstate impacts.

The NESCAUM comments raise three principal issues:

1. The NAAQS review process was compromised by the imposition of a highly compressed schedule which limited opportunities for Clean Air Scientific Advisory Committee (CASAC) review and public comment and resulted in inappropriate mixing of science and policy.
2. The review process was further compromised by EPA's replacement of all members of the CASAC and its failure to form a supporting CASAC advisory panel of experts.
3. A robust review process is essential to ascertain whether the proposed ozone NAAQS provides adequate protection of public health and welfare, as mandated by the Clean Air Act

A copy of the comments can be downloaded [here](#).