

Ozone/Clean Air Act: U.S. Environmental Protection Agency Final Rule Retaining Current National Ambient Air Quality Standard



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The United States Environmental Protection Agency (“EPA”) issued a final rule retaining the current National Ambient Air Quality Standard (“NAAQS”).

This leaves in place the ozone NAAQS that was promulgated during the Obama Administration in 2015.

The Clean Air Act requires that EPA periodically review each NAAQS to determine, based on evolving science, etc., to determine if it should be revised.

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. Once an NAAQS is established, the states are required to develop and implement state implementation plans to ensure that its air quality control regions meet the NAAQS. As a result, once EPA has established a NAAQS, each state is required to formulate, subject to EPA approval, State Implementation Plans (“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.

In 2017 EPA noted that Arkansas was in attainment state-wide with the 2015 ozone NAAQS. Crittenden County had previously been designated non-attainment for this NAAQS. However, in 2016 EPA finalized a rule that redesignated Crittenden County as compliant with the ozone NAAQS.

EPA has previously stated that its decision to retain the current NAAQS has been formed by:

. . . key aspects of the currently available health effects evidence and conclusions contained in the ISA, quantitative exposure/risk analyses and policy evaluations presented in the PA, advice from the CASAC and public input received as part of this ongoing review. The health effects evidence newly available in this review, in conjunction with the full body of evidence critically evaluated in the ISA, continues to support prior conclusions that short-term O3 exposure causes and long-term O3 exposure likely causes

respiratory effects, with evidence newly available in this review also indicating a likely causal relationship of short-term O₃ with metabolic effects.

EPA states its decision is based on its judgment that the current NAAQS protects the public health, with an adequate margin of safety, including the health of at-risk populations with asthma, and protects the public welfare from adverse effects.

The existing primary and secondary standards, established in 2015, are 0.70 parts per billion as the fourth-highest daily maximum 8-hour concentration, averaged over three consecutive years.

EPA's decision has been and will be a subject of significant debate.

The Environmental Defense Fund states in part in a December 23rd news release:

Tens of millions of Americans live in an area with unhealthy levels of smog, and today's decision by the Trump administration to leave inadequate protections in place risks their health and well-being.

The administration is legally required to ensure that our national standards for ground-level ozone pollution are set at a level that protects public health, including a margin of safety for those who are especially vulnerable to smog. . . However, instead of fulfilling his duty, EPA Administrator Andrew Wheeler rushed a decision to maintain our current standards – in spite of a large body of medical and scientific studies showing those standards are outdated and do not adequately protect public health.

The American Chemistry Council in contrast states:

ACC supports the U.S. Environmental Protection Agency [EPA]'s final rule retaining the primary and secondary ozone NAAQS without revision. EPA's decision reflects the analysis highlighted in the supporting policy and science assessments that the current standards of 70 parts per billion [ppb] provide a 'high level of protection from ozone-related health effects.'

EPA's action appropriately retains today's protective standards while providing regulatory certainty that will enable manufacturers to continue critically-needed production.

A link to the final decision can be found [here](#).