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EPA Issues New Proposed Ozone NAAQS of 65-70 ppb

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On November 26, 2014, EPA proposed a new primary National Ambient Air Quality Standard (NAAQS) for Ozone of 65-70 parts per billion (ppb),[1] a more stringent standard than the current 2008 Ozone NAAQS of 75 ppb. If EPA reduces the standard to 65 ppb, 53 of the 63 counties with qualified monitors in the Mountain West would not meet the standard.[2] At 70 ppb, 32 of 63 counties would not meet the standard. EPA acknowledges that because many areas in the Mountain West are subject to high background levels of ozone, the more stringent NAAQS will pose particular problems for compliance in these areas.

EPA also is proposing a more stringent secondary Ozone NAAQS of between 65-70 ppb designed to address vegetation-related welfare effects, which EPA justifies based on a complicated air quality metric that weighs seasonal hourly ozone values during daytime hours. EPA's proposed rule addresses both the Court of Appeals for the D.C. Circuit's 2010 remand of the 2008 Ozone secondary standard, as well as issues raised in EPA's 2010 reconsideration of the 2008 Ozone NAAQS. As part of reconsideration, EPA proposed a new standard of between 60 ppb and 70 ppb, but President Obama pulled the final rule before it was released.

EPA's proposal has been anticipated for months and was compelled by court order. EPA is required, pursuant to the court order, to finalize a new Ozone NAAQS by October 2015. The proposed NAAQS already is being denounced by various groups and will likely be subject to protracted legal and political battles.

The Importance of Background Ozone Levels in the Mountain West

One of the chief underlying concerns for sources in the Mountain West is the level of “background” ozone prevalent in this area. Background levels of ozone, which consist of naturally-occurring levels of ozone combined with ozone caused by wildfires and stratospheric ozone intrusions, as well as transported ozone,[3] have regularly been measured in the Mountain West at levels between 55 ppb and 65 ppb. Ozone levels exceeding the current NAAQS of 75 ppb have been measured in remote rural areas and national parks at high elevations.

EPA acknowledges that the high background levels in the Mountain West will pose compliance problems. EPA contends that such concerns may only be addressed as a public policy issue during the implementation process, separate from the process of setting the levels of the new Ozone NAAQS. Because government-mandated pollution controls would be ineffective in reducing background levels of ozone, however, many groups are demanding further study of and accounting for background levels

before the new NAAQS is finalized.

Implications of Reducing the Ozone NAAQS for Areas in the Mountain West

Based on design value calculations for monitored areas in 2011-2013, a majority of counties in the Mountain West would be designated nonattainment if the new standards were in effect today. At an Ozone NAAQS of 65 ppb, only Montana, three counties in Nevada and two in Wyoming would escape a nonattainment designation. (North Dakota—not considered part of the Mountain West—has ozone levels in the mid- to high-50s.) This means 53 counties would be nonattainment under a 65 ppb standard as compared to 14 counties that would not meet the current 75 ppb standard (not all of which have been designated nonattainment). Colorado, Wyoming, Arizona, and Utah have counties where ozone poses a significant problem: a large area around Denver, Colorado, including portions of the Rocky Mountain National Park; portions of Maricopa and Pinal counties in Arizona; and areas around Sublette County, Wyoming, already have been designated nonattainment for the 2008 Ozone standard; and there is on-going litigation over the most recent designation of the Uinta Basin in Utah as "unclassifiable."

Experts have raised concerns about the regulatory and compliance hurdles posed by the proposed standards. *See* Keith Goldberg, Tougher Ozone Regs May Be Hard For States To Stomach, Law360, Nov. 26, 2014. Some states, such as Texas, have already publicly documented their objections. Others, including Utah, Wyoming, and Nevada, have enrolled in EPA's "Ozone Advance" program as a way to address high ozone levels before the new standards are implemented. However, because Ozone Advance does not guarantee recognition of proactive ozone control measures or equipment installations, industry has remained skeptical of the program.

EPA Requests Comments on Specific Proposed Actions

In the proposed rule, EPA requests public comment on the following major issues:

1. Proposed primary standard of 65-70 ppb (requisite to protect public health)
    a. Reducing the primary standard to as low as 60 ppb
    b. Maintaining the existing standard of 75 ppb
        - Comments should include alternative views/supporting evidence that the existing standard is sufficient to protect public health
2. Proposed secondary standard of 65-70 ppb (requisite to protect public welfare)
    a. Basing justification for the more stringent secondary standard on the W126 metric at 13-17 ppm-hours
    b. Using an alternative secondary standard of W126 metric 13-17 ppm-hours
    c. Using a more stringent secondary standard of W126 metric

7-13 ppm-hours

d. Maintaining the existing secondary standard of 75 ppb
    - Comments should include alternative views/supporting evidence that this level is sufficient to protect public welfare

3. How background ozone levels should affect the choice of the primary and secondary standards within the ranges proposed by the Administrator (65-70 ppb)

EPA also plans to issue implementation guidance and conduct further rulemakings to streamline regulatory burdens and provide flexibility for implementation. EPA will also conduct future rulemaking regarding exceptional events and other exclusions that may be available for areas experiencing high background ozone. The proposed rule has a 90-day comment period that will commence upon publication of the proposed rule in the Federal Register.

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[1]Compliance is based on the annual fourth highest daily maximum eight-hour concentration, averaged over three (3) years.
[2]Based on 2011-2013 data.
[3]EPA distinguishes between "natural background," (NB), "North American background," (NAB), and "United States background," (USB). NB is ozone that would exist in the absence of any manmade precursor emissions. NAB is ozone that would exist in the absence of manmade precursors from North America. And USB is ozone that would exist in the absence of manmade emissions inside of the U.S.
