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Reducing Ozone Regulation Costs Under the New Administration

New administration offers opportunity for engagement on attainment status and to reduce potential compliance costs of 2015 ozone standards.

Over the past four decades, compliance with the ozone National Ambient Air Quality Standards (NAAQS) has proven to be among the most costly of Environmental Protection Agency (EPA) regulations. EPA tightened the primary and secondary ozone standards to 70 parts per billion (ppb) in late 2015, which will likely result in more areas of the country being identified as failing to attain the standards. Areas designated "nonattainment" face significant consequences, ranging from regulatory constraints on existing emission sources to expensive emission offset requirements for new or expanded facilities.

While the standards have already been set by EPA, companies can still pursue a number of important opportunities to mitigate the potential costs and constraints of a "nonattainment" designation.

Final 2015 Ozone National Ambient Air Quality Standards Increase the Number of Potential Nonattainment Areas Across the US

The Clean Air Act (CAA) directs EPA to set NAAQS for "criteria" pollutants — including ozone — that EPA has determined may endanger public health or welfare and are present in ambient air as a result of numerous and diverse emission sources.[1] It requires the EPA administrator, based on his or her judgment, to set "primary" NAAQS for such criteria pollutants at a level whose attainment and maintenance is requisite to protect the public health "with an adequate margin of safety" and to set "secondary" NAAQS at a level requisite to protect the public welfare from "known or anticipated adverse effects."[2] State-adopted regulatory programs, known as state implementation plans (SIPs), provide for "the implementation, maintenance, and enforcement" of the NAAQS within a state.[3]

EPA published revised NAAQS for ground-level ozone on October 26, 2015, reducing the level of the primary and secondary standards from 75 ppb to 70 ppb.[4] In November 2016, EPA published a proposed rule addressing an array of questions related to implementation of the new standards[5] and the agency has also issued a number of related guidance memoranda. One of the most important regulatory steps to implement the new standards, however, is still forthcoming. By this October, EPA is expected to designate every area in the country in relation to projected performance under the new ozone standards. Areas will be designated as attainment, nonattainment or unclassified/attainment.[6] Areas with monitored emissions exceeding the 2015 standards will be designated as "nonattainment" areas. In addition, as explained below, some areas without monitors that are near areas with monitored exceedances may be designated nonattainment based on spatial interpolation.

EPA has projected that 241 counties will be designated as nonattainment (based on 2012–2014 air quality data)[7] — an increase of 44 counties compared to the 2008 standard.[8] Significantly, 10 states that

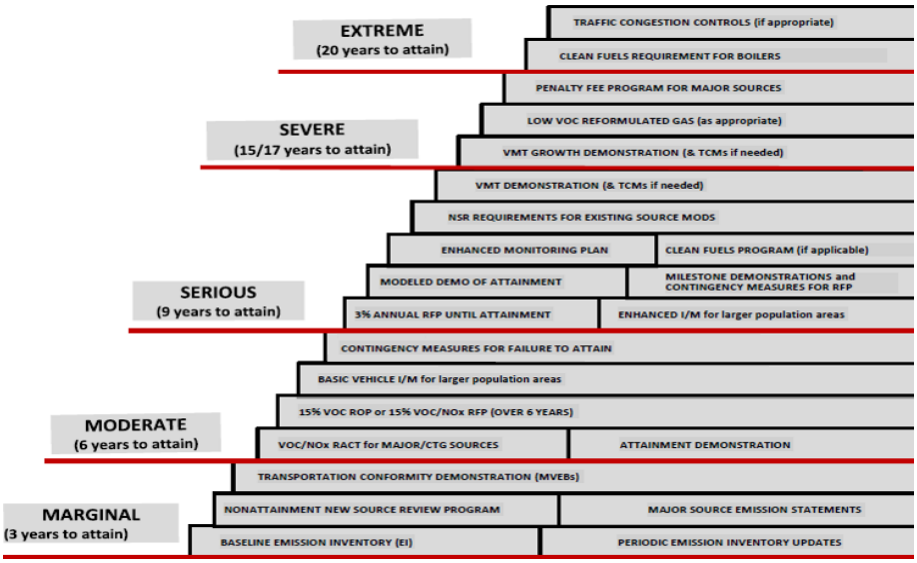
currently lack nonattainment areas have counties that EPA predicts will violate the 70 ppb limit: Alabama, Kansas, Maine, Michigan, Nevada, New Mexico, North Carolina, Oklahoma, Rhode Island and Utah.[9] Furthermore, EPA has projected an increase in the number of nonattainment counties in current nonattainment states. Arizona, Nevada, Utah, New Mexico, Michigan, Indiana, Kentucky, Wisconsin, Oklahoma and Nebraska register the biggest projected impact.[10]

Impact of a Nonattainment Designation

The CAA requires states to achieve reductions in ozone levels by developing state implementation plans (SIPs) to reduce the emission of precursor compounds (NOx and VOCs) by sources within the state.[11] After EPA publicizes final attainment designations in October 2017, states will need to revise their SIPs accordingly.[12] CAA Section 182 directs the timeframe by which states with nonattainment areas will have to submit revisions to their SIPs.[13]

The CAA includes several mechanisms that encourage states to revise or submit satisfactory SIPs by the statutory deadline. Ultimately, failure to submit a plan adequate to attain or maintain compliance with the NAAQS can lead to the suspension of federal highway funds for new non-safety-related projects.[14] Owners of new or modified stationary sources may need to obtain greater emission offsets than would otherwise be required in order to receive a permit for their source.[15] And if a state fails to submit an adequate plan altogether, EPA is obligated to publish and promulgate a Federal Implementation Plan (FIP) for the state.[16]

Nonattainment areas face more stringent requirements than similarly situated attainment areas.[17] In addition, as noted above, nonattainment areas are further classified by the severity of their nonattainment, and requirements for each classification of nonattainment area include a mix of controls on stationary sources and mobile sources. The "marginal" nonattainment areas, for example, are subject to requirements such as a New Source Review (NSR) program, regular reporting of emission inventories and transportation conformity demonstrations.[18] By contrast, "extreme" nonattainment areas must implement a long list of control measures[19] in addition to meeting the requirements of marginal nonattainment areas.[20]



Source: EPA, "Final State Implementation Plan (SIP) Requirements Rule for the 2008 Ozone NAAQS" (February 26, 2015), *available at* https://www.epa.gov/sites/production/files/2015-09/documents/final_sip_requirements_2008_presentation.pdf (modified).

Preconstruction requirements for new or modified major sources are a challenging consequence of "nonattainment" designation. In order to obtain a Nonattainment New Source Review (NNSR) permit, the proposed source must demonstrate that it will use advanced emission controls to meet the "Lowest Achievable Emission Rate" for that type of source, regardless of cost.[21] A proposed source will also need to obtain emissions reductions in the form of "offsets" prior to permit issuance.[22]

Offsets are emission "credits" generated by existing sources that reduce emissions, including through shutting down or reducing operations. CAA Section 173(c) requires that proposed major stationary sources and major modifications obtain emissions reductions of an affected nonattainment pollutant from the same source or other sources in the area to offset a proposed emissions increase.[23] In practice, most offsets are generated by shutdowns, process changes and new equipment. Therefore tighter requirements on industrial and manufacturing entities can lead to fewer opportunities for the type of control measures that generate offsets. As the ozone standards become more stringent, offsets will become more rare in nonattainment areas — and more expensive.[24]

Sources that do not comply with the applicable SIP requirements face significant risk of enforcement — either by EPA or through the CAA's citizen suit provision.[25] Ultimately, a company interested in building or expanding in an area designated as "nonattainment" will face mounting costs, delays and uncertainties associated with the more restrictive permit requirements of a nonattainment designation.

Background Ozone as a Special Concern

A tighter ozone NAAQS is of particular concern in western states because of the difficulty in attaining the standard in some areas due to high levels of "background ozone." Ozone near the earth's surface can be transported by winds before eventually being removed from the atmosphere. Due to such transport, emissions from Canada and Mexico and as far away as Asia contribute to ozone concentrations in the US. In addition, a phenomenon known as "stratospheric intrusion" can result in transport of ozone from the stratosphere to ground level, particularly in certain high-altitude areas. The ozone concentrations that come from sources other than anthropogenic US emissions — such as motor vehicle emissions and electric power generation — are referred to as "background ozone."[26] Since background contributions cannot be controlled through regulation of US sources, they can make attainment more difficult in certain areas of the country and can result in additional costs for sources located in those areas.

Industry Should Engage in EPA's Designation Process

A broad array of stakeholders have challenged the 2015 ozone NAAQS in court — with industry petitioners arguing that the standards are too stringent and environmental petitioners arguing that they are too lax. While the outcome of this litigation remains to be seen, these challenges face an uphill battle given the deference the courts typically give to EPA's technical and scientific judgment in setting the NAAQS. Any effort to rescind the NAAQS would require EPA to reverse the course it set in the rulemaking and current litigation, as well as to justify that reversal — a time-consuming and difficult process that environmental groups and some states would inevitably litigate. Legislative proposals to delay the NAAQS similarly may face long odds.

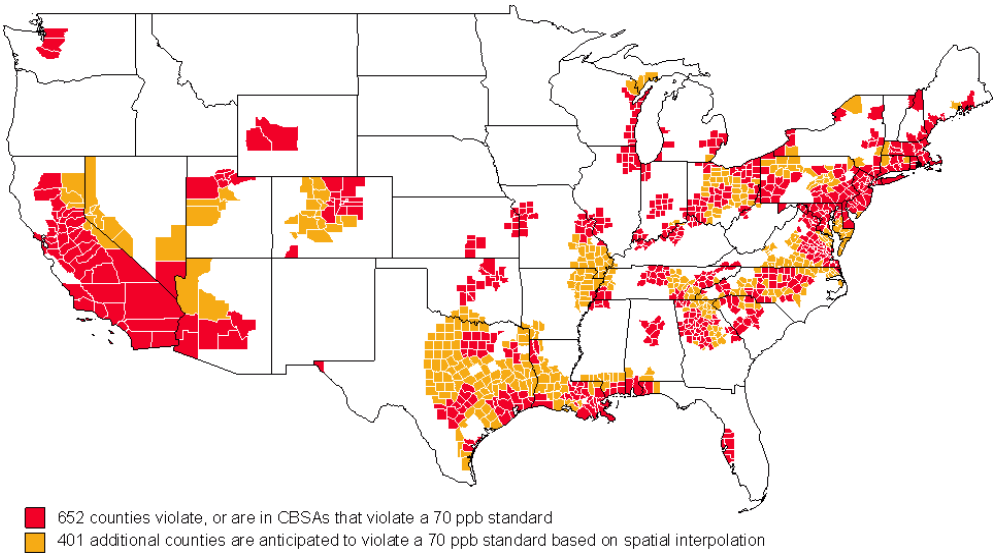
Accordingly, the most important action companies can take in the near term is to engage advantageously with EPA on the classification of areas in which they operate. Companies avoid the most rigid requirements and significant costs when the areas in which they operate are designated "attainment".

States recommended area designations to EPA in October 2016, and EPA will respond by June 1 with anticipated modifications to those recommendations. States and the public will then have 30 days to comment and to provide new information and analyses for EPA to consider. EPA is expected to issue

final area designations by October 1, 2017.[27] This process, therefore, offers a number of opportunities to engage, but action is required soon.

Areas of the country lacking ozone monitors will particularly need to engage in the designation process. EPA has historically used the data of neighboring ozone monitors and a process known as "spatial interpolation" to designate the status of *unmonitored* areas for the purpose of NAAQS.[28] Shortly before EPA announced the 2015 NAAQS for ozone, the agency published the map below.[29]

Core Based Statistical Areas (CBSAs) that Violate an Ozone Standard of 70 ppb



The red portions of the map indicate areas that violate the 70 ppb standard and the yellow portions show areas anticipated to violate the 70 ppb standard based on spatial interpolation. Notably, EPA created this map using its 2008–2010 data. Attainment and nonattainment designations will be based on 2014–2016 data, which generally show lower ozone levels. But the map predicts that the tightened ozone standards render vulnerable areas in a number of states — particularly California, Texas, Louisiana, Utah, Arizona, Colorado, Arkansas, Missouri, Ohio, Virginia, Pennsylvania, New York and New Jersey. Areas in each of these states for which monitoring data does not show violation of the 70 ppb standard could nonetheless be designated nonattainment because of proximity to nonattainment areas.[30]

Companies should proactively review the state-proposed designations and, if necessary, engage with the states with respect to any questionable nonattainment designations. Even more importantly, companies should prepare now to comment on the designations that will be proposed by EPA this summer. Given the Trump administration's "pro-business" orientation, industry may be able to play a more influential role in the designation process than it has in the past, with opportunities to present data supporting the reversal of certain proposed nonattainment designations. Even where EPA has proposed an area as attainment, companies should engage to help build a strong record supporting that designation. Attainment designations are frequently contested by those who urge more expansive nonattainment areas, so arguments in support of favorable designations are just are important as challenges to unfavorable ones. The comment process this summer will be short, so preemptive planning is prudent.

An important starting place for understanding what EPA will consider in designating areas as attainment or nonattainment is the EPA-issued Guidance for Area Designations for the 2015 Ozone NAAQS.[31] EPA identifies five factors it considers in the designation process. Importantly, however, EPA notes that these

are not exclusive factors, and that other sources of data could be considered in assessing an area. EPA's approach leaves a good deal of discretion to the agency and opens up a prime area for stakeholders' engagement in the process. Varying analysis can be employed to model and evaluate factors used in designation, such as air quality trends, geography, emissions, meteorology and jurisdictional boundaries. This technical data can be integrated with legal and policy arguments, which may particularly appeal to EPA's new leadership.

Moreover, companies operating in areas affected by background ozone should support states' efforts to use the available mechanisms under the CAA and EPA regulations and guidance to ameliorate the responsibility of reducing emissions from background sources. States affected by background ozone can use special rules allowing exclusion of emissions that result from "exceptional events" (including natural events, such as wildfires and stratospheric intrusions, or an event caused by human activity that is unlikely to recur in that location) from consideration in making designations.[32] Similarly, the CAA includes provisions allowing states to take into account international transport of pollution in establishing their SIPs,[33] and for less stringent requirements in ozone nonattainment areas designated as rural transport areas.[34] Working to support the efforts of state air management agencies in these areas can help to ensure that EPA provides critical regulatory relief.

Additional Strategies Exist for Cost Mitigation in Nonattainment Areas

Developing Flexibility in State Implementation Plans

Even in areas where monitoring data conclusively demonstrates nonattainment, companies may have significant opportunities to mitigate costs and secure operational flexibility.

These strategies require engagement at the federal, state and local levels to support adaptable and efficient mechanisms in SIP revisions after the designation process is finalized.

- **Local** air agencies may be involved and influential in the process, depending on the jurisdiction, and may also participate in routine implementation and enforcement.

- **State** regulators develop and submit the implementation proposals, making them an important player in every instance. If state regulators support flexible compliance mechanisms that effectively minimize costs, they can increase the likelihood of ultimate success.

- **EPA** must approve all SIPs. Consequently, EPA buy-in on flexible implementation approaches is also critical.

Market-Based Trading Programs

Industry can begin by working with state actors to develop SIPs that include **market-based trading programs** and to argue against more stringent requirements with less flexible implementation options. RECLAIM, a NOx and SO2 emissions trading program that was developed with the assistance of lawyers at Latham & Watkins, is an example of a market-based emissions program based in the South Coast of California. It was designed to allow utilities and other major stationary sources to trade SO2 and NOx credits under a cap on total emissions. In the intervening 20+ years, RECLAIM has provided significant cost savings and operational flexibilities to sources in that region. However, certain environmental groups have long opposed the program, and on March 3, 2017, the South Coast Air Quality Management District approved an Air Quality Management Plan that would phase out the market-based program and replace it with a traditional, less flexible command and control regulatory framework.

Facility-Specific SIP Components

SIPs can include **variances** where facility-specific factors make a promulgated standard impracticable to achieve. Variances will only protect against state enforcement, so federal EPA relief in the form of an administrative order or a consent decree is needed for such a measure. Special issues presented by background ozone can also be addressed in the SIP.

Companies can negotiate for individualized SIP components, provided they can secure EPA approval. **Plantwide Applicability Limits** (PALs) can provide significant flexibility for an emissions source. PALs enable equipment changes and other process modifications without permit revisions so long as emissions do not exceed specified levels. Although PALs can be time-consuming to negotiate, companies that need operational flexibility in a facility may find them very worthwhile. Finally, **source-specific SIPs** allow companies to essentially codify facility-specific requirements in an applicable SIP.

Alternative Compliance Plans

Alternative Compliance Plans are another flexible regulatory approach. A SIP can include an alternative compliance payment (ACP) scheme that allows a source to make a compliance payment to the state in lieu of achieving on-site reductions where costs exceed a reasonable cost-effectiveness threshold. An ACP scheme can also allow the state to use the funds towards emission reductions from other sources.

A 1997 Presidential Memorandum to EPA introduced this concept after EPA revised the NAAQS for ozone and particulate matter. Recognizing that the revised standards could impose an unanticipated level of cost on regulated sources, the Memorandum recommended an ACP option for sources facing control costs at or above a cost-effectiveness threshold to fund reductions from other sources and to stimulate new technologies.[35] EPA approved ACP programs under CAA Section 110, as well as SIP revisions that specifically incorporate a mitigation fee program. In 1999, the South Coast Air Quality Management District (SCAQMD) in California amended its local Rule 1121 to include a mitigation fee alternative.[36] SCAQMD described the mitigation fee alternative as an "emission reduction option, in which monies collected by the District from water heater manufacturers are placed in a restricted fund and are used to fund stationary and mobile source emission reduction programs targeted at equivalent NOx emission reductions as to those that would have otherwise occurred and have been approved by the District's Governing Board."[37] EPA approved that amendment as part of revisions to California's SIP in 2001.[38] SCAQMD later amended Rule 1121, but retained and updated the mitigation fee alternative. EPA approved that amended version of the rule as a revision to California's SIP in 2009, noting that the "rule includes a mitigation fee that can be paid in lieu of meeting interim emission limits. . . ." [39]

Companies can work with local and state air agencies to develop an ACP framework as a compliance flexibility mechanism within SIPs that clearly benefits both emitters and states. Specifically, states acquire valuable emission reduction financing while sources obtain another avenue for compliance assurance at reasonable cost.

Offsets

Addressing offset shortages during SIP development may also provide companies with the opportunity to secure avenues for cost savings. Establishing flexible offset programs allows businesses to readily identify offsets prior to building or expanding in nonattainment areas despite the effects of the standards on the existing industrial and manufacturing base. Working with state agencies to develop inter-region or inter-sector offset programs can expand the current supply of offsets and facilitate generation of credits. For example, the use of inter-region offsetting might be possible in regions with ozone transport impacts. Interested stakeholders could demonstrate the viability of this approach with appropriate modeling.

Moreover, while offsets most often involve the stationary source sectors, companies can find opportunities in the mobile source sector by building support for this inter-sector approach.

Relatedly, EPA's November 2016 proposed implementation rule for the 2015 ozone standards supports the use of interprecursor trading (IPT) — that is, trading of requirements between NOx and VOCs based on an identified, area-specific ratio. IPT is an important mechanism for increasing the availability of offsets in nonattainment areas. Specifically, EPA plans to revise the offset requirements by requiring technical justification for the use of IPT to meet those requirements. EPA has proposed that state and local air agencies demonstrate that the use of IPT provides equivalent or greater air quality benefits for ozone concentration reductions in nonattainment areas as part of SIPs.[40] This would allow state or local agencies to apply IPT provisions on a case-by-case basis when permitting projects in nonattainment areas. Accordingly, each permit applicant for an NNSR project who wished to use ozone IPT to satisfy the emissions offset requirement would be required to calculate how much one ozone precursor (e.g., VOC) would need to be offset by the other ozone precursor (NOx) in order to be equivalent, generally by performing photochemical modeling or other technical demonstrations.

Industry currently has opportunities to influence a workable IPT option, including by engaging with states in the development of area-specific or permit-specific IPT ratios. Moreover, industry may help defend the rule, which is likely to be challenged by nongovernmental organizations who previewed in a comment letter their opposition to EPA's proposal.[41]

CAA's "Good Neighbor" Provision as an Area of Advocacy

Companies should also be aware of and consider CAA's "good neighbor" provision, which requires EPA and states to address interstate transport of air pollution that affects downwind states' ability to attain and maintain NAAQS.[42] Notably, the tightening of the ozone standards — and consequently, the likely designation of additional nonattainment areas — may cause more upwind sources to be identified as contributing to nonattainment or interfering with maintenance of the NAAQS in a downwind area.

The CAA requires states to develop "transport" SIPs to address the requirements of the good neighbor provision. Further, the Act allows downwind states to petition EPA to impose controls on upwind sources that are violating the provision. EPA's current rule to address interstate transport of ozone pollution, known as the Cross-State Air Pollution Rule, only addresses the 2008 standard and only covers 22 eastern states.[43] Ultimately, the agency may face pressure to update and expand this rule to address the new NAAQS and additional states. Accordingly, this is an additional area of potential advocacy for companies operating in an area likely to affect downwind sources. Determining linkages between upwind sources and downwind impacts is a complex and fact-intensive effort in which results vary, depending upon modeling approaches and underlying assumptions. Legal and policy arguments also play an important role. As EPA finalizes designations for the new ozone NAAQS, industry should evaluate and engage with EPA and the states on these issues — and plan to do so going forward.[44]

Conclusion

The 2015 NAAQS for ground-level ozone will have a significant effect on facilities in areas that cannot meet the tightened standards. Companies still have time to avoid unnecessary nonattainment designations by engaging in EPA's area designation process. Companies operating in areas that cannot avoid nonattainment designation may pursue advocacy and planning to help leverage potential compliance flexibilities. Proactive engagement can enable companies to meaningfully reduce the cost of complying with these more stringent standards.

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Endnotes

[1] *See* Clean Air Act (CAA), codified at 42 U.S.C. § 7401 et seq. Authority to establish NAAQS comes from 42 U.S.C. §§ 7408, 7409.

[2] 42 U.S.C. § 7409(b)(1)&(2).

[3] 42 U.S.C. § 7401(a)(1).

[4] U.S. Environmental Protection Agency (EPA), "National Ambient Air Quality Standards for Ozone: Final Rule," 80 Fed. Reg. 65,292 (Oct. 26, 2015).

[5] EPA, "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements," 81 Fed. Reg. 81276 (Nov. 17, 2016).

[6] 42 U.S.C. § 7407(d).

[7] EPA, "Ozone Maps" accompanying the October 2015 release of the final ozone NAAQS rule, archived at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/oira_2060/2060_08162011-1.pdf.

[8] *See id.*; U.S. EPA Green Book, "8-Hr Ozone (2008) Nonattainment Areas," at http://www.epa.gov/airquality/greenbook/hntc.html. (as of March 3, 2017, 41 areas encompassing 197 counties are over 75 ppb).

[9] *See* Ozone Maps. Because EPA expects to use 2014-2016 data when it makes its final designations, these estimates may change. An interactive map showing anticipated nonattainment and attainment areas can be found at https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=6a89e7170dd147b1852ec11ccb3880e8.

[10] *Id.*

[11] *See* 42 U.S.C. §§ 7410, 7511a. Section 7410 contains general requirements for the contents of SIPs, including enforceable emission limitations, provisions prohibiting sources from emitting pollutants which will contribute significantly to nonattainment elsewhere, and provisions for adequate funding and authority to carry out the plans. Part D consists of general requirements applicable to nonattainment areas in subpart 1 and more specific requirements applicable to the various ozone nonattainment classifications in subpart 2. Section 7410(k) contains the requirements for EPA action on plan submissions. It addresses completeness, deadlines, full and partial approval, conditional approval and disapproval.

[12] *See* 42 U.S.C. §§ 7410(a)(1)&(2). SIP provisions must provide for the implementation of all reasonably available control measures as expeditiously as practicable, require a showing of reasonable further progress by sources, and require permits for the construction and operation of new or modified major sources, called New Source Review.

[13] 42 U.S.C. § 7511a. For example, States have six months from the effective date of their designation to submit revisions with respect to with Marginal areas of nonattainment, for example, but Moderate nonattainment areas have three years to submit certain revisions. *Id.*

[14] 42 U.S.C. § 7509(b)(1).

[15] 42 U.S.C. § 7509(b)(2).

[16] 42 U.S.C. § 7411(c), (d).

[17] 42 U.S.C. § 7407(d).

[18] 42 U.S.C. §7511a(a).

[19] 42 U.S.C. §7511a(e).

[20] *Id.; see also* 42 U.S.C. §§ 7511 – 7515.

[21] 42 U.S.C. § 7511a(2)(C).

[22] *See* 42 U.S.C. §§ 7511a(a)(4); (b)(5); (c)(10); (d)(2); (e)(1); 40 CFR § 51.165.

[23] *See* 42 U.S.C. § 7503(c).

[24] See EPA's own analysis of offset costs within its Regulatory Impact Analysis of the Proposed Revisions the National Ambient Air Quality Standards for Ground-Level Ozone ("RIA"), November 2014, at 7A-7 to 7A-8; 7A-23 to 7A-24.

[25] 42 U.S.C. § 7604(a).

[26] *See* EPA, "National Ambient Air Quality Standards for Ozone: Final Rule," 80 Fed. Reg. 65,292, 65,436 (Oct. 26, 2015) (EPA considers background ozone to be formed from sources or processes other than U.S. manmade emissions of nitrogen oxides (NOx), volatile organic compounds (VOC), methane (CH4), and carbon monoxide (CO)).

[27] EPA, "National Ambient Air Quality Standards for Ozone: Final Rule," 80 Fed. Ref. 65,291 (Oct. 26, 2015).

[28] *See* EPA, Ozone National Ambient Air Quality Standards: Scope and Methods Plan for Welfare Risk and Exposure Assessment (April 2011), *available at* https://www3.epa.gov/ttn/naaqs/standards/ozone/data/2011_04_WelfareREA.pdf.

[29] EPA, "Ozone Maps" accompanying the October 2015 release of the final ozone NAAQS rule, archived at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/oira_2060/2060_08162011-1.pdf.

[30] *Id.* As noted *supra,* this map is based on EPA's 2008-2010 data. Attainment and nonattainment designations will be based on 2014-2016 data.

[31] EPA," Guidance for Area Designations for the 2015 Ozone National Ambient Air Quality Standards" (Feb. 25, 2016), *available at* https://www.epa.gov/sites/production/files/2016-02/documents/ozone-designations-guidance-2015.pdf

[32] *See* 42 U.S.C. § 7619.

[33] *See* 42 U.S.C. § 7509a.

[34] *See* 42 U.S.C. § 7511(h).

[35] Presidential Documents, "Memorandum of July 16, 1997, Implementation of Revised Air Quality Standards for Ozone and Particulate Matter," 62 Fed. Reg. 38,421, 38,429 (July 18, 1997) ("The EPA will encourage the use of concepts such as a Clean

Air Investment Fund, which would allow sources facing control costs higher than $ 10,000 a ton for any of these pollutants to pay a set annual amount per ton to fund cost-effective emissions reductions from non-traditional and small sources.").

[36] South Coast Air Quality Management District Protocol Rule 1121(b)(5): Nitrogen Oxides Emissions Compliance Testing for Natural Gas-Fired Water Heaters and Small Boilers (January 1998), *available at* http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1121.pdf?sfvrsn=4.

[37] Rule 1121(b)(5).

[38] *See* EPA, "Revisions to the California State Implementation Plan, California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District, and South Coast Air Quality Management District: Direct Final Rule," 66 Fed. Reg. 57,666 (Nov. 16, 2001).

[39] EPA, "Revisions to the California State Implementation Plan, South Coast Air Quality Management District Sacramento Metropolitan Air Quality Management District: Direct Final Rule," 74 Fed. Reg. 20,880, 20,881 (May 6, 2009).

[40] *Id.*

[41] Letter from Air Alliance Houston, et al., to Catherine McCabe, Acting Administrator, EPA (Feb. 13, 2017), *available at* http://www.cleanwateraction.org/sites/default/files/docs/publications/Ozone%20Implementation%20Rule%20Comments%20February%2013th%202017.pdf.

[42] 42 U.S.C. § 7410(a)(2)(D)(i)(I).

[43] On September 13, 2013, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," which provides "advice on the development of infrastructure SIPs for the 2008 ozone NAAQS . . . as well as infrastructure SIPs for new or revised NAAQS promulgated in the future." The EPA issued guidance on 42 U.S.C. § 7410(a)(2)(D)(i)(I) [Section 110] requirements for the 2008 ozone standard on January 22, 2015 entitled, "Information on the Interstate Transport "Good Neighbor" Provision for the 2008 Ozone NAAQS Under CAA Section 110(a)(2)(D)(i)(I)," *available at* https://www.epa.gov/ozone-pollution/information-interstate-transport-good-neighbor-provision-2008-ozone-national-ambient.

[44] For additional information, see Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1-10 (Jan. 22, 2015), *available at* https://www.epa.gov/sites/production/files/2015-11/documents/goodneighborprovision2008naaqs.pdf.