



STATE ENVIRONMENTAL AGENCY PERSPECTIVES ON TIMELY NAAQS IMPLEMENTATION

Results of a Survey by the Association of Air Pollution Control Agencies (AAPCA)
September 2015

Summary:

- In proposing revised National Ambient Air Quality Standards (NAAQS) for ground-level ozone to a range between 65 and 70 parts per billion (ppb) in late 2014, the U.S. Environmental Protection Agency (EPA) stated: “The EPA intends to propose any appropriate rules for assisting with implementing any revised O₃ NAAQS resulting from this proposal within 1 year after a revised NAAQS is established... The EPA anticipates finalizing these items by the time areas are designated nonattainment.”¹
- Following the end of the comment period for U.S. EPA’s proposed revision to the National Ambient Air Quality Standards (NAAQS) for ground-level ozone, AAPCA² conducted a survey of all written state environmental agency comments on the proposal (totaling 44 state agency comments).
- Of the 44 state environmental agencies that filed individual comments, roughly three-quarters raised concerns about the need for timely implementation rules and guidance from U.S. EPA under a revised standard.
- Citing the delayed timeline of implementation for the 2008 ozone NAAQS and the truncated requirements for state and local agencies, many states also suggested a timeline for U.S. EPA to issue and finalize implementation rules and guidance.
- Of the states commenting on when U.S. EPA should issue proposed implementation rules and guidance for a revised ozone NAAQS, more than 90 percent recommended that the Agency do so at the time the final NAAQS is promulgated (October 2015).
- Of the states commenting on when U.S. EPA should finalize implementation rules and guidance for a revised ozone NAAQS, more than half recommended finalizing these tools within one year and roughly one-quarter recommended finalizing with final area designations.
- Despite these recommendations, at an April 2015 meeting of U.S. EPA’s Clean Air Act Advisory Committee, U.S. EPA’s Acting Assistant Administrator for Air and Radiation stated: “I’m not sure that we can meet everybody’s, or some people’s, expectations that we have an implementation rule ready when the final rule goes out, there’s just a lot of reasons why that just is very, very difficult and may not even be appropriate to do. We are trying to provide a guidance and rules in as timely a way as possible.”³

¹ 79 FR 75373.

² The Association of Air Pollution Control Agencies (AAPCA) is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. 18 state environmental agencies currently sit on AAPCA’s Board of Directors. AAPCA has not taken a position with respect to where the primary or secondary ozone NAAQS should be set. AAPCA is housed in Lexington, Kentucky as a policy program with The Council of State Governments. You can find more information about AAPCA at: <http://www.cleanairact.org>.

³ Transcript for this meeting is not publicly available. See: Amanda Peterka, “AIR POLLUTION: EPA won’t release ozone standard, state guidelines at same time,” E&E News, April 23, 2015 (subscription).

Relevant Excerpts from State Environmental Agency Comments⁴:

“EPA should issue implementation rules for this new standard in a timely manner to facilitate the state planning process. Preferably, EPA would propose implementation rules when the level of the standard is finalized and finalize implementation rules when nonattainment designations are issued.”

- [Alabama Department of Environmental Management](#), pg. 2

“[T]he EPA has only recently provided implementation guidance for the 2008 ozone rule. It makes more sense to bring our state and nation into compliance with the existing 75 ppb standard before tightening the standard further.”

- [Arkansas Department of Environmental Quality](#), pg. 5

“Failure on the EPA's part to issue timely regulations sets the states up for unsuccessful implementation, invites litigation, and leads to disputes over missed deadlines, rather than focusing on the health of our environment and those that live in it.”
- Wyoming Department of Environmental Quality

“Uncertainty about EPA’s expectations and implementation requirements would have a significant, adverse impact on states’ ability to make designation recommendations and plan for attainment in areas that do not meet the revised standard. Timely guidance is necessary for states to evaluate potential attainment boundaries and develop the best and most appropriate local control strategies for improving air quality.”

- [Florida Department of Environmental Protection](#), pg. 2

“GEPD requests that EPA’s proposed implementation guidance be issued as soon as possible.... Timely implementation guidance would allow states sufficient time to meet their regulatory obligations.”

- [Georgia Environmental Protection Division](#), pg. 10

“It should be noted that on February 13, 2015, during the comment period for this proposed rule, the Administrator signed the final rule establishing requirements for developing SIPs under the **2008** ozone NAAQS. The Administrator should consider the history regarding timeliness of federal action to set forth the requirements for an approvable SIP submission.”

- [Kentucky Energy and Environment Cabinet](#), pg. 3

⁴ In addition to state environmental agency comments, several regional associations of state and local air agencies, including the [Western States Air Resources Council](#) (“Whatever level EPA chooses for the ozone standard, implementation in the west will require a much better understanding of the role of background and transported ozone, and we request that EPA provide the resources needed to advance our knowledge in these areas.”) and the [Northeast States for Coordinated Air Use Management](#) (“NESCAUM states request that EPA issue implementation rules and guidance at the same time as the revised ozone NAAQS.”) commented on similar issues. All state comments are available at: http://www.csg.org/aapca_site/news/OzoneNAAQSComments.aspx.

"The lag time in issuing the implementation criteria has been disruptive to air quality management agencies as once the NAAQS is promulgated a statutory clock for SIP submission begins to tick."
- Tennessee Department of Environment and Conservation

"The 2008 ozone implementation requirements have just been issued. Thus, there has not been adequate time for the emission reductions mandated by these requirements to cause significant decreases in ozone concentrations. MDEQ believes that the promulgation of the proposed standard should be delayed until the reduction measures for the current standard are allowed."

- [Mississippi Department of Environmental Quality](#), pg. 5

"The timing of the implementation rule would be more helpful to states if the proposed rule were issued concurrently with the final ozone NAAQS and promulgated as a final rule one year later. This would allow areas designated as marginal nonattainment to use the implementation rule to comply with the revised NAAQS."

- [Nevada Division of Environmental Protection](#), pg. 19

"Congress did not intend for U.S. EPA to issue ill-timed regulations or guidance clearly needed by the states to address their requirements under the NAAQS. For example, U.S. EPA issued final regulations for implementation of the 2008 ozone NAAQS on February 17, 2015; approximately five months before marginal areas are to attain the standard.... This is not a rare occurrence but rather a recent example of ill-timed guidance and regulations.

"Ohio EPA cannot emphasize enough the implications and difficulties that have arisen because of the lack of proper, timely, final guidance.... This is a significant waste of the states' very limited resources."
- Ohio EPA

Ohio EPA will continue to urge U.S. EPA to issue timely regulations and guidance to better assist states in performing their required role.... Ohio EPA cannot emphasize enough the implications and difficulties that have arisen because of the lack of proper, timely, final guidance regarding interstate transport and infrastructure SIPs. *Proposing* a rule or guidance does not give Ohio peace of mind.... This is a significant waste of the states' very limited resources."

- [Ohio Environmental Protection Agency](#), pg. 20 -21

“The Department appreciates the EPA’s announced intent to provide area designation guidance four months after promulgation of the NAAQS, but believes that this guidance, and other implementation guidance, should accompany the final rule in October, 2015. The recent court decision *NRDC v. EPA* has eliminated the one year grace period between designation of a nonattainment area and applicability of conformity rules. Thus, it is important that states have the guidance needed to make designation recommendations as soon as possible after the NAAQS is promulgated. Other aspects of implementation should also have early EPA guidance. If new state regulations are required, there is a significant and often lengthy lead time for drafting, public notice, and legislative approval. Simultaneous publication of the final NAAQS rule and implementation guidance will help achieve timely promulgation of needed regulatory changes at the state level.”

- [South Carolina Department of Health and Environmental Control](#), pg. 5

“EPA often times promulgates a new NAAQS and waits quite some time to provide implementation guidance for use in preparing State Implementation Plans (SIPs). The lag time in issuing the implementation criteria has been disruptive to air quality management agencies as once the NAAQS is promulgated a statutory clock for SIP submission begins to tick. EPA should contemporaneously issue implementation guidance with the revised NAAQS to give the air quality management agencies a reasonable amount of time to act upon the NAAQS revision. As will be discussed in more detail below, setting the standard too close to background levels is likely to cause significant implementation issues.”

- [Tennessee Department of Environment and Conservation](#), pg. 1

**"Uncertainty about EPA's expectations and implementation requirements would have a significant, adverse impact on states' ability to make designation recommendations and plan for attainment."
- Florida Department of Environmental Protection**

“As a result of the EPA’s lack of a timely implementation rule for the 2008 standard, states have been forced to expend effort and resources to develop SIP revisions without EPA guidance, and therefore may ultimately be wasting resources by developing submittals that will not be approvable.”

- [Texas Commission on Environmental Quality](#), pg. 36

“EPA should propose and promulgate NAAQS and their associated implementation rules and guidance concurrently rather than consecutively. Providing states the necessary tools to meet CAA mandates at the same time NAAQS are promulgated gives states the best chance at meeting all CAA mandates in a timely manner.”

- [Virginia Department of Environmental Quality](#), pg. 9

**"For states required to submit a plan, untimely guidance potentially results in significant wasted efforts."
- West Virginia Department of Environmental Protection**

“For states required to submit a plan, untimely guidance potentially results in significant wasted efforts developing a plan that may or may not comport with the eventual guidance.”

- [West Virginia Department of Environmental Protection](#), pg. 18

“States that are already understaffed and underfunded cannot be reasonably expected to both formulate and implement plans without receiving federal guidance. This could lead to inconclusive interpretations of the federal rule, resulting in SIP disapproval and disputes between state and federal regulatory agencies, and ultimately prolonging the successful implementation of the NAAQS. The CAA’s lack of a requirement that the EPA should promulgate additional implementation regulations or guidance for a revised NAAQS does not serve as an extenuating reason for not doing so. A lack of clear direction not only encumbers the states, but it also encumbers the EPA with complications that will arise – and it ultimately disserves the citizens, wildlife, and ecology within each state because it invariably results in delayed, fractured implementation of the NAAQS. . . . Failure on the EPA’s part to issue timely regulations sets the states up for unsuccessful implementation, invites litigation, and leads to disputes over missed deadlines, rather than focusing on the health of our environment and those that live in it.”

- [Wyoming Department of Environmental Quality](#), pg. 13 - 14

State Environmental Agency Recommended Timelines for Ozone NAAQS Implementation

Agency	Suggested Proposal Timeline		Suggested Final Timeline			Relevant Excerpt
	Simultaneous with NAAQS	Other	Within One Year	With Nonattainment Designations	Other	
Alabama Department of Environmental Management	X			X		“EPA should issue implementation rules for this new standard in a timely manner to facilitate the state planning process. Preferably, EPA would propose implementation rules when the level of the standard is finalized and finalize implementation rules when nonattainment designations are issued.” (pg. 2)
Alaska Department of Environmental Conservation	X		X			“ADEC requests that EPA commit to, and follows through on, proposing an implementation rule for the revised O ₃ standards at the same time as the final revised standards are issued and issuing the final implementation rule within one year following the proposal.” (pg. 1)
Colorado Department of Public Health & Environment	X					“EPA Should Issue Implementation Guidance Simultaneously With Any New Standard.... if EPA doesn’t issue the guidance simultaneously with the promulgation of the revised standard, EPA has essentially shortened the time in which states have to prepare their SIPs. As a result, states will spend months, if not years, preparing a SIP that EPA might ultimately disapprove because it does not comply with EPA guidance. The states have previously requested timely implementation guidance. CDPHE respectfully urges EPA to act on these requests. For all these reasons, CDPHE submits that EPA should issue guidance simultaneously with the revised standard.” (pg. 6-7)
Connecticut Department of Energy & Environmental Protection	X					“EPA’s past practice of issuing implementation guidance at almost the same time as attainment is required continues to place states at a tremendous disadvantage. Connecticut echoes the call from many other states in requesting EPA issue implementation rules and guidance at the same time as the revised ozone NAAQS.” (pg. 6)

Florida Department of Environmental Protection				X Prior to final area designations		“EPA should work quickly to establish an implementation rule outlining the process for transitioning from the 2008 ozone NAAQS to any revised ozone NAAQS that EPA may adopt....EPA should afford states ample opportunity to evaluate the implications of EPA’s implementation rule for affected areas and supplement or revise the state’s area designation recommendations, as necessary, prior to making final area designations under any revised ozone NAAQS.” (pg. 2)
Georgia Environmental Protection Division	X				X No later than six months after	“GEPD requests that EPA’s proposed implementation guidance be issued as soon as possible. At a minimum, GEPD urges EPA to propose the implementation guidance at the same time the final standard is issued and complete the final implementation guidance no later than six months afterwards. Timely implementation guidance would allow states sufficient time to meet their regulatory obligations.” (pg. 10)
Illinois Environmental Protection Agency			X			“Illinois EPA also encourages USEPA to issue the final implementation rule for these new standards within one year of finalizing the revised ozone standards, and to develop said rule with state and local air agencies.” (pg. 2)
State of Iowa Coordinated Comments (IDNR, IDPH, IDOT, IEDA, IUB)	X		X			“Iowa recommends that EPA propose an implementation rule for the revised ozone standard at the same time it issues the final revised standard. Iowa also recommends that EPA finalize the implementation rule and related guidance within one year following proposal of that rule.” (pg. 6)
Kansas Department of Health & Environment	X				X As soon as possible	“EPA should commit to proposing the implementation rule for the revised ozone standards at the same time it issues the final revised standards and issuing the final implementation rule as soon as possible following such proposal. If the EPA does not issue this rule in a timely fashion, it greatly impedes the KDHE’s ability to respond to the changes to the ozone standard. Additionally, it is imperative that development of the implementation rule and any related guidance be done in close collaboration with state and local air agencies.” (pg. 4)

Maine Department of Environmental Protection	<p style="text-align: center;">X</p>					<p>“EPA needs to fulfill its obligation to issue its implementation rules and guidance concurrently with the revised ozone NAAQS.... Concurrently releasing the implementation requirements with the new ozone NAAQS will also help states achieve the revised standards in a timelier manner, better protecting public health and the environment. EPA must commit to the judicious issuance of the implementation rules and guidance. We cannot have another seven-year delay.” (pg. 2)</p>
Michigan Department of Environmental Quality		<p style="text-align: center;">X</p> <p style="text-align: center;">Not more than six months after final NAAQS</p>				<p>“Due to the deadlines and process requirements placed on state agencies, we believe that the proposed time frames for guidance issuance are too long, leaving inadequate time for states to complete their obligations under the Clean Air Act (CAA). If the USEPA does not issue guidance documents until one year after promulgation of the rule, it will be much more difficult for states to complete their CAA obligations—especially the Section 110 requirements. The MDEQ urges the USEPA to issue implementation guidance as soon as possible and certainly not more than six months after promulgation of the final rule. For designation recommendations, the MDEQ requests that the USEPA reconsider the four-month delay in guidance issuance referred to in the proposed rule and instead issue designation recommendation guidance simultaneously with promulgation of the NAAQS final rule. Delay in guidance availability makes meeting the time frame for submittal of designation recommendations much more burdensome for states.” (pg. 2 – 3)</p>
Nebraska Department of Environmental Quality	<p style="text-align: center;">X</p>					<p>“Timely access to adequate training, guidance, and implementation resources has been a significant problem in prior NAAQS revisions. Having clear and timely guidance and implementation tools is crucial for enabling the states to effectively implement and comply with the NAAQS. The NDEQ therefore requests that the EPA issue implementation rules and guidance documents at the same time as the final NAAQS.” (pg. 3)</p>
Nevada Division of Environmental Protection	<p style="text-align: center;">X</p>		<p style="text-align: center;">X</p>			<p>“The timing of the implementation rule would be more helpful to states if the proposed rule were issued concurrently with the final ozone NAAQS and promulgated as a final rule one year later. This would allow areas designated as marginal nonattainment to use the implementation rule to comply with the revised NAAQS.” (pg. 19)</p>

New Jersey Department of Environmental Protection	X		X			“USEPA should not revise the ozone NAAQS unless it can also promptly provide the states with the rules, guidance and tools necessary to implement it... the USEPA should propose an ozone NAAQS implementation rule at the same time that it promulgates a revised NAAQS and finalize it within 1 year of proposal.” (pg. 1 - 2)
New York State Department of Environmental Conservation	X		X			“Specifically, EPA should release draft implementation guidance upon finalizing the ozone NAAQS. Implementation guidance should then be finalized within a year of proposal. Development of the implementation rule and any related guidance should be done in close collaboration with state and local air agencies.” (pg. 6 – 7)
Oklahoma Department of Environmental Quality	X		X			“ODEQ requests that EPA issue the guidance for designations and boundaries as promptly as possible. Additionally, ODEQ requests that EPA issue the proposal for the implementation rule for the revised standard at the same time EPA issues the final revised standard, and that it issue the final implementation rule within one year of proposal. The planning and coordination that is required on the part of the states is substantial, and swift promulgation of these rules is appreciated. (pg. 9)
Pennsylvania Department of Environmental Protection	X				X Expediently	“EPA should propose the implementation rule and associated guidance at the same time it promulgates the revised ozone standard, and the final rule and guidance should be issued expeditiously.” (pg. 4)
South Carolina Department of Health and Environmental Control	X					“The Department appreciates the EPA’s announced intent to provide area designation guidance four months after promulgation of the NAAQS, but believes that this guidance, and other implementation guidance, should accompany the final rule in October, 2015. The recent court decision <i>NRDC v. EPA</i> has eliminated the one year grace period between designation of a nonattainment area and applicability of conformity rules. Thus, it is important that states have the guidance needed to make designation recommendations as soon as possible after the NAAQS is promulgated. Other aspects of implementation should also have early EPA guidance. If new state regulations are required, there is a significant and often lengthy lead time for drafting, public notice, and legislative approval. Simultaneous publication of the final NAAQS rule and implementation guidance will help achieve timely promulgation of needed regulatory changes at the state level.” (pg. 5)

Tennessee Department of Environment and Conservation	X					“EPA often times promulgates a new NAAQS and waits quite some time to provide implementation guidance for use in preparing State Implementation Plans (SIPs). The lag time in issuing the implementation criteria has been disruptive to air quality management agencies as once the NAAQS is promulgated a statutory clock for SIP submission begins to tick. EPA should contemporaneously issue implementation guidance with the revised NAAQS to give the air quality management agencies a reasonable amount of time to act upon the NAAQS revision. As will be discussed in more detail below, setting the standard too close to background levels is likely to cause significant implementation issues.” (pg. 1)
Texas Commission on Environmental Quality		X Within one year of revised NAAQS		X		“The EPA should commit to firm deadlines for the proposed and final implementation rule for addressing the revised ozone NAAQS in order to provide timely guidance for state implementation plan (SIP) development. The EPA should also provide specific, timely guidance for the transport requirement, which is a part of the infrastructure requirement.... The TCEQ agrees with the EPA’s general intent to propose this implementation rule within one year after the revised ozone NAAQS are promulgated and finalize the implementation rule by no later than the time the area designations process is finalized (approximately one year later). However, the TCEQ requests that the EPA commit to firm deadlines for the completion of such implementation guidance documents rather than relying on ‘target dates.’” (pg. 36)
Virginia Department of Environmental Quality	X					“EPA should propose and promulgate NAAQS and their associated implementation rules and guidance concurrently rather than consecutively. Providing states the necessary tools to meet CAA mandates at the same time NAAQS are promulgated gives states the best chance at meeting all CAA mandates in a timely manner.” (pg. 9)
West Virginia Department of Environmental Protection	X					“WVDEP strongly encourages EPA to issue proposed implementation guidance concurrently with any final NAAQS, but certainly not more than six months after promulgation of a final rule.” (pg. 18)

Wisconsin Department of Natural Resources				X		“It is imperative that EPA finalize implementation requirements for any updated standard as quickly as possible so that states are fully informed of the key attainment planning needs and can meet their statutory obligations in a timely matter. EPA just this month finalized the implementation rule for the 2008 NAAQS - seven years after the original standard promulgation and almost three years after designations. An implementation rule for a 2015 ozone NAAQS is not likely to diverge significantly in approach and scope from the just finalized rule, so EPA should be able to finalize an implementation rule for the new standard concurrently with final designations (e.g., fall of 2017), at the very latest.” (pg. 7)
Wyoming Department of Environmental Quality	X		X			“Failure on the EPA’s part to issue timely regulations sets the states up for unsuccessful implementation, invites litigation, and leads to disputes over missed deadlines, rather than focusing on the health of our environment and those that live in it. The AQD requests that the EPA finalizes all the necessary rules and guidance necessary for states to meet CAA obligations in a timely manner. The AQD requests that the EPA commits to, and follows through on, proposing the 2015 Ozone NAAQS State Implementation Plan Requirements Rule at the same time the final revised ozone standard is promulgated, and that the EPA issues the final implementation rule within one year following the proposal.” (pg. 14)
TOTALS:						
24	19	2	8	4	3	