



Colorado's Efforts to Attain the Ozone National Ambient Air Quality Standards

BY ROBYN WILLE AND CHRIS COLCLASURE

This article discusses ozone regulation in Colorado and the state's efforts to attain compliance with national air quality standards.

Ozone is one of six "criteria" pollutants regulated under the federal Clean Air Act (the Act).¹ Unlike most regulated pollutants, ozone is not emitted directly by a source. Instead, ozone is a gas that is formed when other pollutants called "ozone precursors" react in the atmosphere in the presence of sunlight. Stratospheric ozone in the upper atmosphere protects us from the sun's harmful rays, but ground-level (i.e., tropospheric) ozone causes harmful health effects.

Colorado's ozone levels have gradually improved over the years, but additional reductions are needed to keep improving public health and to attain air quality standards. Ozone concentrations in the Denver Metro/North Front Range (DMNFR)² area can exceed federal standards, particularly during the summer months of June through September. These exceedances put many Coloradans at risk for asthma and other respiratory conditions. Colorado has comprehensive ozone regulations, but the DMNFR area may face significantly

more burdensome requirements if it continues to violate ozone standards.

How is Ozone Regulated?

Under the Act, the U.S. Environmental Protection Agency (EPA) promulgates primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone and other criteria pollutants to protect public health and welfare. The primary standards must reflect a level of the pollutant "requisite to protect the public health."³ EPA must consider only factors related

to health when setting the primary standard, and not economic factors.⁴ The secondary standard protects the “public welfare” and usually considers factors such as the pollutant’s impact on vegetation and the ecosystem.⁵ Within two years of promulgating the NAAQS, EPA must designate areas as being in attainment or nonattainment of the NAAQS.⁶ An area attains the ozone NAAQS if air quality monitoring shows ambient ozone concentrations at or below the NAAQS.⁷ States have flexibility, within federal requirements, to determine how to attain the NAAQS.

Designations and State Implementation Plans

Section 110 of the Clean Air Act requires every state to develop and submit a state implementation plan (SIP) within three years after EPA promulgates or revises a NAAQS for any criteria pollutant, whether or not the state contains a nonattainment area; these SIPs are called “infrastructure SIPs.”⁸ Infrastructure SIPs contain permitting, enforcement, monitoring, and certain other elements of a regulatory program.⁹ Infrastructure SIPs also contain “good neighbor” provisions to protect downwind states from the interstate transport of pollution.¹⁰

States with areas designated nonattainment face additional requirements set forth in the Act in Title 42 USC, Chapter 85, Subchapter I, Part D, subpart 1 (nonattainment provisions in general) and subpart 2 (additional provisions for ozone nonattainment areas). The ozone requirements of subpart 2 are more specific than, and in some cases explicitly supersede, the general requirements of subpart 1.¹¹

Section 172 of the Act (in subpart 1) requires states to submit a SIP revision within three years after an area is designated as nonattainment.¹² Ozone nonattainment areas are classified as Marginal, Moderate, Serious, Severe, or Extreme.¹³ Section 182 of the Act (in subpart 2) requires additional SIP elements with more stringent and cumbersome requirements for higher ozone classifications.¹⁴

Ozone nonattainment areas that do not attain the NAAQS by their attainment deadline are reclassified or “bumped up” and required to submit a more stringent SIP revision.¹⁵ Conversely, if a nonattainment area comes into

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attainment, the state may request redesignation as an attainment area and submit maintenance SIPs covering the next two 10-year periods.¹⁶

Ozone NAAQS and Colorado’s Status

EPA promulgated the first ozone NAAQS in 1979 and promulgated revisions in 1997, 2008, and 2015. Colorado’s status with respect to each NAAQS revision is discussed below.

1997 NAAQS (revoked). In 1997, the EPA adopted an eight-hour ozone standard of 0.08 parts per million (ppm), referred to as the 1997

NAAQS.¹⁷ Implementation of the 1997 NAAQS was delayed by litigation and Congressional action.¹⁸ EPA was sued for failing to make timely designations and entered a consent decree requiring it to designate areas by April 15, 2004.¹⁹ In 2002, Colorado and 11 other states entered Early Action Compacts (EAC) with EPA to defer the designation of 14 nonattainment areas, subject to the submittal of SIP revisions requiring early action to reduce ozone and certain other requirements.²⁰ EPA extended Colorado’s attainment deadline several times pursuant to the EAC program until the Denver area was designated nonattainment effective November 20, 2007, based on air quality data showing a violation of the standard.²¹ In July 2009, Colorado submitted an attainment demonstration SIP to EPA for the 1997 NAAQS. EPA partially approved it in 2011.²² Colorado’s ozone design value has not violated the 1997 NAAQS since 2009. EPA revoked the 1997 NAAQS in 2015.²³ Colorado never sought redesignation as an attainment area.

2008 NAAQS. EPA lowered the ozone NAAQS to 0.075 ppm²⁴ in 2008.²⁵ The DMNFR was designated a Marginal nonattainment area under the 2008 NAAQS, effective July 20, 2012.²⁶ The region failed to meet its July 20, 2015 attainment deadline²⁷ and was reclassified as a Moderate nonattainment area.²⁸ Following the reclassification, Colorado adopted and submitted to EPA a SIP revision with additional ozone control measures and a demonstration (using photochemical modeling) that the DMNFR would attain the 2008 NAAQS in 2017. On July 3, 2018, EPA published a final rule approving the majority of Colorado’s SIP revision, including the attainment demonstration.²⁹ However, unverified 2018 monitoring data show that the DMNFR has very likely failed to attain the standard by the attainment date and may be reclassified as a Serious nonattainment area, resulting in significant new requirements.

2015 NAAQS. EPA further lowered the ozone NAAQS to 0.070 ppm (equivalent to 70 ppb) in 2015. EPA designated many areas as attainment/unclassifiable in November 2017.³⁰ On March 9, 2018, EPA defined the thresholds for classifying 2015 NAAQS nonattainment areas.³¹ On June 4, 2018, EPA published a final rule designating

the DMNFR as a Marginal nonattainment area, and the rest of the state as attainment/unclassifiable.³² Colorado's existing SIP likely fulfills many of the Marginal area requirements, although a new baseline emissions inventory will be needed and the adequacy of other SIP elements must be reviewed.³³ If the DMNFR misses its August 3, 2021 attainment date it will face reclassification as a Moderate area, triggering additional requirements.

Colorado's Ongoing Compliance Efforts

Colorado revised its SIP in November 2016 after being reclassified as a Moderate ozone nonattainment area under the 2008 NAAQS.³⁴ The main elements of the SIP revision include:

- an attainment demonstration,
- reasonable further progress reductions in volatile organic compounds (VOCs) and oxides of nitrogen (NOx) emissions,
- reasonably available control technology (RACT) and reasonably available control measures (RACM) requirements,
- contingency measures in the event of failure to meet a milestone or to attain the standard,
- a vehicle inspection and maintenance program, and
- NOx and VOC emission offset ratios for major source permits.³⁵

The SIP and regulations adopted by Colorado in November 2016 addressed the statutory elements, and partially addressed the requirement that Moderate nonattainment area SIPs include provisions requiring RACT for existing facilities that are major sources of VOC or NOx.³⁶ In July 2018, Colorado adopted RACT standards for additional existing combustion sources in the DMNFR, such as engines, boilers, and turbines.³⁷ The state is also currently developing major source RACT standards for certain additional categories of existing major sources, with Air Quality Control Commission (AQCC) hearings anticipated in November 2018.

Colorado further revised its RACT SIP in November 2017 to add certain oil and gas requirements, such as more frequent leak inspections.³⁸ Colorado submitted the SIP

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revision but EPA has not yet acted on it. The 2017 SIP revision became mandatory³⁹ after EPA published its Control Techniques Guidelines for the Oil and Natural Gas Industry (Oil and Gas CTG),⁴⁰ which describe VOC emission control technologies and techniques that EPA believes to be reasonable.

EPA later solicited comment on a proposal to withdraw the Oil and Gas CTG.⁴¹ The effect of withdrawal on Colorado's 2017 rulemaking is unclear. Section 182(b)(2) of the Act requires RACT for “each category of VOC sources in the area covered by a CTG document issued” between certain dates, and is silent regarding withdrawal of the CTG. Colorado law prohibits the inclusion of regulations in the SIP where not required by the Clean Air Act,⁴² contributing to the uncertainty surrounding the impact of the potential CTG withdrawal and any actions that Colorado must take as a result.

Colorado actively promotes voluntary ozone control measures that go beyond its regulatory requirements. The Colorado Department of Public Health and Environment, Air Pollution Control Division, informs industry of best practices and encourages voluntary actions to reduce emissions. The Air Pollution Control Division alerts participating companies when high ozone levels are forecasted and requests additional actions on those days.

Deadline to Attain the 2008 NAAQS

The DMNFR was required to attain the 2008 NAAQS of 75 ppb by July 20, 2018, qualify for an extension of time, or face reclassification to a Serious nonattainment area.⁴³ The area did not attain by July 20, 2018 because its ozone design value exceeded the NAAQS, based on the three-year average of the fourth maximum daily value for the three preceding calendar years (2015 to 2017).⁴⁴ Colorado requested a one-year extension of the attainment date based on a “clean data” year in 2017.⁴⁵ In this context, a clean data year requires that the fourth highest daily maximum eight-hour average concentration for each monitor in the nonattainment area not exceed 75 ppb in 2017.⁴⁶ The DMNFR met this criterion after EPA concurred with Colorado's request to exclude certain ozone monitoring data regarding two

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days that were influenced by wildfire smoke pursuant to the Exceptional Events Rule, yielding a 2017 fourth maximum daily value of 75 ppb.⁴⁷

In light of the 2017 clean data year, EPA will likely extend the DMNFR's attainment deadline to July 20, 2019, with attainment based on the preceding three-year average concentration (2016 to 2018). A second extension of time is available if the DMNFR achieves a second clean data year in 2018. However, unverified data recorded through August 2018 indicates that the three-year average concentration will not attain the 75 ppb standard and the area will not qualify for a second one-year extension.

Failure to Timely Attain the 2008 NAAQS

The DMNFR may be reclassified as a Serious nonattainment area based on a failure to timely attain the 2008 NAAQS or qualify for a second clean data year extension. If reclassified, Colorado must submit a SIP revision satisfying the requirements of section 182(c) of the Act, which are significant. The SIP requirements with the greatest impact on Colorado involve the major source permit threshold, emission offsets, and reasonable further progress.⁴⁸ The level of pollution at which a source is treated as a major source drops from 100 to 50 tons per year (tpy) in a Serious nonattainment area.⁴⁹ Each existing source in the DMNFR with the potential to emit between 50 and 100 tpy (of

which there are hundreds) must apply for a Title V operating permit as a major source, and new or modified major sources will face stringent preconstruction permitting requirements.⁵⁰ New and modified major sources of VOC or NOx must offset any increase in their VOC or NOx emissions at a ratio of 1.2 to 1.0.⁵¹ The SIP must show reasonable further progress by demonstrating that VOC and NOx emissions will decline by 3% per year.⁵²

Potential Revocation of the 2008 NAAQS

In its proposed implementation rule for the 2015 NAAQS, EPA indicated that it was considering whether to revoke the 2008 NAAQS after the 2015 NAAQS is implemented. EPA stated that it would not reclassify or redesignate areas under a revoked standard; that is, the DMNFR would not be reclassified as Serious even if it failed to attain the 2008 NAAQS.⁵³ The DMNFR would, however, remain subject to previously approved SIP provisions and applicable requirements⁵⁴ and anti-backsliding provisions.⁵⁵

EPA similarly revoked the 1997 NAAQS when the implementation rule for the 2008 NAAQS took effect.⁵⁶ EPA concluded that revocation “ensures that only one ozone NAAQS—the more protective 2008 ozone NAAQS—directly applies, rather than having two standards apply concurrently.”⁵⁷ EPA further stated there would

be no obligation to reclassify areas that fail to timely attain the revoked 1997 NAAQS.⁵⁸

However, a recent decision in *South Coast Air Quality Management District v. EPA*⁵⁹ indicates that EPA lacks the authority to avoid reclassification of existing nonattainment areas under a revoked standard. The D.C. Circuit vacated that portion of EPA's final rule that allowed 1997 NAAQS nonattainment areas to avoid reclassification upon failure to timely attain, finding that this provision impermissibly waived statutory attainment deadlines.⁶⁰ EPA has sought rehearing of portions of the D.C. Circuit's decision, but not regarding the issue related to revocation of the 1997 standard discussed above. Colorado is waiting on guidance from EPA as to whether and how it intends to revoke the 2008 NAAQS.

Potential Failure to Attain Due to International Emissions

Ambient ozone concentrations can be affected by local emissions and emissions from “a bordering country or from sources many thousands of miles away.”⁶¹ Congress recognized this fact and addressed international transport in section 179B of the Act.⁶² In certain cases, this section “relieves states from imposing control measures on emissions sources in the state's jurisdiction beyond those necessary to address reasonably controllable emissions from within the U.S.”⁶³

Section 179B(a) requires EPA to approve a SIP that does not demonstrate timely attainment and maintenance of a NAAQS if the plan meets all other applicable requirements and the state establishes to the Administrator's satisfaction that “but for emissions emanating from outside of the United States,” the area would attain and maintain the NAAQS.⁶⁴ This section applies to all criteria pollutants, including ozone. Section 179B(b) of the Act is specific to ozone. It excludes ozone nonattainment areas from the reclassification provisions of section 181(b)(2)⁶⁵ if the state satisfactorily demonstrates that the area would have timely attained the NAAQS but for emissions emanating from outside of the United States.⁶⁶ Such areas also avoid the mandatory emission fees that would otherwise apply to severe and extreme ozone nonattainment areas that fail to timely attain.⁶⁷

The international transport provisions are narrow. Areas impacted by emissions from outside the United States are designated nonattainment and classified based on their ambient air quality.⁶⁸ The state remains subject to all requirements of the applicable ozone classification, and no mandatory emissions control measures are relaxed. “[S]tates with nonattainment areas are expected to adopt reasonable emissions controls to lessen emissions of criteria pollutants to promote citizen health protection.”⁶⁹ To that end, EPA’s 2015 NAAQS SIP Requirements Rule proposes to require all states submitting a section 179B demonstration to show they have adopted Reasonably Available Control Measures, including RACT, for all nonattainment areas, including Marginal areas.⁷⁰

EPA has approved three attainment plans under section 179B.⁷¹ All three of the affected areas share a border with Mexico. Questions remain regarding the statute’s applicability, including whether the provision is limited to border areas. The 2008 NAAQS SIP Requirements Rule indicates that “EPA does not believe this provision is restricted to areas adjoining international borders.”⁷² EPA later explained that it anticipates section 179B will most often be used by states with border areas and solicited comment on whether other areas should be eligible.⁷³


The DMNFR is impacted by international emissions. As part of its overall photochemical modeling and sensitivity analyses, a contractor to the Regional Air Quality Council conducted a preliminary “zero-out” modeling analysis. Using the 2011 SIP modeling platform, the contractor removed anthropogenic emissions emanating outside the United States to evaluate the incremental impact of those emissions in Colorado. Preliminary results indicate that the 2011 ozone concentrations at the four DMNFR monitoring sites with the highest ozone levels would have been approximately 6 to 7 ppb lower in the absence of international anthropogenic emissions, a difference large enough for the DMNFR to attain the 2008 NAAQS.⁷⁴ The modeling results are preliminary, and other techniques are available for evaluating the impact of background and transported ozone. Colorado currently has no plans to submit a

section 179B demonstration but has stated it intends to evaluate the issue.

Conclusion

Colorado has struggled with ozone levels for a number of years, but significant progress has been made, both through voluntary measures and through regulation. Ozone concentrations have trended down over time, yet air quality in the DMNFR must continue to improve to protect public health and attain the 2008 and 2015 NAAQS.

Support from the local community, including members of the Colorado Bar Association, will be critical in moving the needle. Interested businesses and law firms—and not just those engaged in a business directly involving the emission of ozone precursors—should email cdphe.commentsapcd@state.co.us for more

information on how they can help reduce Colorado’s ozone levels. 



Robyn Wille is a senior assistant attorney general in the Colorado Attorney General’s Office working in the Natural Resources

& Environment Section, Air Quality Unit—robyn.wille@coag.gov. **Chris Colclasure** is senior counsel at Beatty & Wozniak, P.C. and immediately before publication was the deputy director of the Air Pollution Control Division at the Colorado Department of Public Health and Environment—ccolclasure@bwenenergy.com. This article was written in the personal capacities of the authors and not on behalf of the Colorado Department of Law, the Colorado Department of Public Health and Environment, or Beatty & Wozniak, P.C.

Coordinating Editor: Melanie Granberg, mgranberg@gcgllc.com

NOTES

- 42 USC §§ 7408, 7409.
- The DMNFR contains all of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson counties, and most of Larimer and Weld counties. 40 CFR § 81.306.
- 42 USC § 7409(b)(1); *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 475-76 (2001).
- Whitman*, 531 U.S. at 475-76.
- Mississippi v. E.P.A.*, 744 F.3d 1334, 1359 (D.C. Cir. 2013). In practice, EPA usually sets the primary and secondary standards at the same level.
- 42 USC § 7407(d)(1)(B).
- Attainment is based on the “design value” of ozone. Each day during the ozone monitoring season, several monitoring stations record the highest average ozone concentration observed during any eight-hour period. The ozone monitoring season is now year-round. 2015 Ozone NAAQS, 80 Fed. Reg. 65,292, 65,416 (Oct. 26, 2015). At each monitor, the three days of each year with the highest eight-hour values are disregarded. The design value is the three-year average of the fourth maximum daily eight-hour concentration at an individual monitor in the nonattainment area, with any decimals truncated.
- 42 USC § 7410(a)(1).
- 42 USC § 7410(a).
- 42 USC § 7410(a)(2)(D)(i) and (ii).
- South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882, 899 (D.C. Cir. 2006).
- 42 USC § 7502(b).
- 42 USC § 7511(a)(1).
- 42 USC § 7511a(a) to (e).
- 42 USC § 7511(b)(2).
- 42 USC §§ 7407(d)(3), 7505a.
- 1997 Ozone NAAQS, 62 Fed. Reg. 38,856 (July 18, 1997).
- See *Whitman*, 531 U.S. 457.
- See EPA, Early Action Compact Program for Ground-Level Ozone: A Study (EAC Report) at 12, EPA-456/R-09-001 (June 2009), <https://archive.epa.gov/airquality/eac/web/pdf/eaccasestudy2009.pdf>.
- Id.* at 14-16. In addition, 15 attainment areas participated in the EAC program to voluntarily adopt measures to remain in attainment.
- Id.* at 17-18. The Denver area was the only nonattainment-deferred area that failed to complete the EAC program due to an air quality violation. A number of states and environmental organizations challenged EPA’s use of Early Action Compacts, and EPA now acknowledges that it lacked statutory authority for the EAC Program. *Am. Lung Ass’n. v. EPA*, No. 04-1275, 2008 WL 3198886 (D.C. Cir. July 29, 2008); *Rocky Mountain Clean Air Action v. EPA*, No. 07-1012, 2012 WL 556141 (D.C. Cir. Jan. 18, 2012) (challenging the Denver, Colorado deferral); EPA, Report to Congress on Administrative Options to Enable States to Enter into Cooperative Agreements to Provide Regulatory Relief for Implementing Ozone Standards at 6 (Aug. 14, 2017), www.eenews.net/assets/2017/08/25/document_gw_05.pdf.
- Approval of Colorado SIP, 76 Fed. Reg. 47,443 (Aug. 5, 2011).
- 80 Fed. Reg. 12,264 (Mar. 6, 2015). However, on February 16, 2018, the U.S. Court of Appeals for the D.C. Circuit issued its opinion in *South Coast Air Quality Mgmt. Dist. v. E.P.A.*, 882 F.3d 1138 (D.C. Cir. 2018), vacating EPA’s decision to waive the statutory attainment deadlines

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associated with the revocation of the 1997 NAAQS. The impacts of this ruling are still unclear, but its potential impacts are discussed in more detail later in this article.

24. Equivalent to 75 parts per billion (ppb).
25. 2008 Ozone NAAQS, 73 Fed. Reg. 16,436 (Mar. 12, 2008).
26. 2008 Ozone NAAQS Designations, 77 Fed. Reg. 30,088 (May 21, 2012).
27. EPA initially set an attainment deadline of December 31, 2015, but this was changed to July 20, 2015 after litigation. 2008 Ozone NAAQS Implementation Rule, 77 Fed. Reg. 30,160 (May 21, 2012); *Nat. Res. Def. Council v. EPA*, 777 F.3d 456 (D.C. Cir. 2014).
28. Reclassification of Several Areas for the 2008 Ozone NAAQS, 81 Fed. Reg. 26,697, 26,699 (May 4, 2016).
29. Approval and Promulgation of State Implementation Plan Revisions, 83 Fed. Reg. 31,068 (July 3, 2018).
30. 2015 Ozone NAAQS Designations, 82 Fed. Reg. 54,232 (Nov. 16, 2017).
31. 2015 NAAQS Classification Rule, 83 Fed. Reg. 10,376 (Mar. 9, 2018).
32. Additional 2015 Ozone NAAQS Designations, 83 Fed. Reg. 25,776 (June 4, 2018).
33. 42 USC § 7511a(a)(1) to (4).
34. Reclassification of Several Areas for the 2008 Ozone NAAQS, 81 Fed. Reg. 26,697, 26,699 (May 4, 2016).
35. 42 USC § 7511a(b).
36. 42 USC § 7511a(b)(2)(C). While § 7511a(b) requires SIP revisions for major sources of VOC, § 7511a(f) extends these requirements to major sources of NOx.
37. See, e.g., AQCC Reg. No. 7 § XVI.D, 5 C.C.R. 1001-9, www.colorado.gov/pacific/cdphe/aqcc-regs.
38. AQCC Reg. No. 7 §§ XII, XVIII, 5 C.C.R. 1001-9.
39. 42 USC § 7511a(b)(2)(A) and (B).
40. Control Techniques Guidelines for the Oil and Gas Industry, EPA-453/B-16-001 (Oct. 2016).
41. Notice of Proposed Withdrawal of the CTG, 83 Fed. Reg. 10,478 (Mar. 9, 2018).
42. CRS § 25-7-105.1.
43. 81 Fed. Reg. at 26,698; 42 USC § 7511.
44. Colorado Department of Public Health and Environment (CDPHE) Ozone Summary Table, www.colorado.gov/airquality/html_resources/ozone_summary_table.pdf.
45. 42 USC § 7511(a)(5); 40 CFR § 51.1107; Memorandum from Garrison Kaufman, Director, Air Pollution Control Division, to Doug Benevento, Regional Administrator, EPA Region VIII (June 4, 2008) (Kaufman Memorandum).
46. 81 Fed. Reg. at 26,698; 40 CFR § 51.1107. To qualify for an extension, the area must also comply with all commitments and requirements in the applicable SIP. 42 USC § 7511(a)(5)(A).
47. Kaufman Memorandum; Memorandum from Martin Hestmark, Assistant Regional Administrator, EPA Region VIII, to Garrison

Kaufman, Director, Air Pollution Control Division (July 11, 2018) (excluding certain data recorded on September 2 and September 4, 2017); Treatment of Data Influenced by Exceptional Events, 81 Fed. Reg. 68,216 (Oct. 3, 2016).

48. The remaining provisions of section 182(c) are discussed in the Regional Air Quality Council's Briefing Paper, "Ozone Planning: Options Moving Forward with the 2008 Standard" (Sept. 1, 2017), https://raqc.egnnyte.com/dl/kXNLAPKdNk/O3PlanningOptionsMovingForward_Final090117.pdf.
49. 42 USC § 7511a(c); AQCC Reg. No. 3, Part D § II.A.25.b, 5 C.C.R. 1001-5.
50. 42 USC §§ 7511a(c), 7661(2)(b); AQCC Reg. No. 3, Parts C and D.
51. 42 USC § 7511a(c)(10).
52. 42 USC § 7511a(c)(2)(B).
53. 80 Fed. Reg. at 12,297. Areas may be redesignated or reclassified up to the effective date of revocation of the old standard. *Id.* at 12,297 n.77 (noting that two one-hour nonattainment areas were redesignated to attainment the day before and the day of revocation of the one-hour NAAQS).
54. *South Coast Air Quality Mgmt. Dist.*, 472 F.3d 882, 900; 42 USC § 7502(e).
55. 80 Fed. Reg. at 12,296; Proposed 2015 Ozone NAAQS Implementation Rule, 81 Fed. Reg. 81,276, 81,288 (Nov. 17, 2016).
56. 80 Fed. Reg. at 12,296.
57. 80 Fed. Reg. at 12,297.
58. *Id.*; 40 CFR § 51.1105(d)(2).
59. *South Coast Air Quality Mgmt. Dist.*, 882 F.3d 1138, 1156.
60. *Id.*
61. 81 Fed. Reg. at 81,303.
62. 42 USC § 7509a.
63. Proposed 2015 Ozone NAAQS SIP Requirements Rule, 81 Fed. Reg. at 81,303.
64. 42 USC § 7509a(a).
65. The statute refers to section 181(a)(2), codified at 42 USC § 7511(a)(2). EPA believes this reference is erroneous and should cite section 181(b)(2). 81 Fed. Reg. at 81,303 n.76.
66. 42 USC § 7509a(b).
67. *Id.*
68. 81 Fed. Reg. at 81,304.
69. *Id.*
70. *Id.*
71. The three affected areas are El Paso, Texas (one-hour ozone NAAQS); Nogales, Arizona (PM-10 NAAQS); and Imperial Valley, California (PM-10) (overturned in *Sierra Club v. EPA*, 352 F.3d 1186 (9th Cir. 2003)); 81 Fed. Reg. at 81,303-04.
72. 2008 NAAQS SIP Requirements Rule, 80 Fed. Reg. at 12,294.
73. 81 Fed. Reg. at 81,303 to 81,304.
74. Morris and McNally, "Ozone Contributions of International Emissions Using 2011 Modeling Platform" (Nov. 2, 2017), https://raqc.egnnyte.com/dl/wFaUQgigQx/II.b_2017_Denver_Mod-Forum_International_2017-11-02v2.pdf.