



April 12, 2016

TO: Members, Subcommittee on Energy and Power

FROM: Committee Majority Staff

RE: Hearing entitled “H.R. 4775, Ozone Standards Implementation Act of 2016”

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## I. INTRODUCTION

On Thursday, April 14, 2016, at 10:15 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing entitled “H.R. 4775, Ozone Standards Implementation Act of 2016.”

## II. WITNESSES

- **Misael Cabrera**, Director, Arizona Department of Environmental Quality;
- **Bryan W. Shaw**, Chairman, Texas Commission on Environmental Quality;
- **Alan Matheson**, Executive Director, Utah Department of Environmental Quality; and
- **Seyed Sadredin**, Executive Director/Air Pollution Control Officer, San Joaquin Valley Air Pollution Control District.

Additional witnesses may be announced.

## III. BACKGROUND

Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) has established National Ambient Air Quality Standards (NAAQS) for criteria pollutants, including ground-level ozone.<sup>1</sup> Ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC), from either manmade or natural sources, in the presence of sunlight. According to EPA, since 1980 ozone levels have declined by [over 30 percent](#).

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<sup>1</sup> Criteria pollutants include ozone, particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, and lead. See EPA [NAAQS website](#).

EPA initially established an ozone standard in 1971, and subsequently revised the standards in 1979, 1997, and 2008.<sup>2</sup> The standards set in 2008 established an 8-hour standard of 75 parts per billion (ppb), replacing a 1997 standard equivalent to 84 ppb. *See* 73 Fed. Reg. 16,436 (March 27, 2008). In 2012, EPA designated over 230 counties in 26 states and the District of Columbia as being wholly or partially in nonattainment with the 2008 standards.<sup>3</sup> EPA did not publish implementing regulations until March 6, 2015, and states are currently in the process of implementing those standards.<sup>4</sup>

In October 2015, EPA also promulgated a new 8-hour ozone standard of 70 ppb.<sup>5</sup> Based on the most recent monitoring data (2012-2014), [241 counties](#) in 33 states would violate this standard.<sup>6</sup> This does not include contiguous counties that do not exceed 70 ppb, but that may be designated to be in nonattainment,<sup>7</sup> or the more than 2,400 counties that do not currently have ozone monitors.<sup>8</sup> Under the agency's current schedule for implementing the 2015 ozone standards, states must submit designation recommendations by October 1, 2016,<sup>9</sup> and EPA would designate areas as being in nonattainment by October of next year.<sup>10</sup>

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<sup>2</sup> *See* [Table of Historical Ozone NAAQS](#); *see also* [2008 National Ambient Air Quality Standards \(NAAQS\) for Ozone](#). For the classifications under the 2008 and 1997 ozone standards, *see* [Designations](#).

<sup>3</sup> *See* [Nonattainment Designations for the 2008 Standards, Counties by State](#). *See also* 98 Fed. Reg. 30088 (May 21, 2012). Some areas are also designated nonattainment with the 1997 standard. *See* [CRS Report](#).

<sup>4</sup> *See* "[Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements: Final Rule](#)," 80 Fed. Reg. 12264 (March 6, 2015).

<sup>5</sup> *See* [Final Rule](#) (published at 80 Fed. Reg. 65,292 (Oct. 25, 2015)); [Regulatory Impact Analysis](#); [Press Release](#); [Overview](#); "[Designations and Permitting Requirements for the 2015 Ozone Standards](#)"; [2015 Ozone NAAQS Timelines](#); [Memorandum](#); [Supporting Documents](#) and [Ozone \(O3\) Standards](#); [docket](#). EPA revised both the "primary" standard to protect public health, and "secondary" standard to protect the public welfare, to a level of 70 ppb.

<sup>6</sup> *See* EPA [County-level Design Values for the 2015 Ozone Standards](#)" Of the 241 counties, 213 are outside of California. The agency states that "[EPA will not designate areas as nonattainment based on \[2012-2014\] data, but likely based on 2014-2016 data which are expected to show improved air quality.](#)"

<sup>7</sup> Under the CAA, states are directed to designate as nonattainment "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant." 42 U.S.C. § 7407(d).

<sup>8</sup> EPA has advised the Committee that in 2014, there were 813 U.S. counties with ozone monitors reporting data to EPA, and 2,407 counties with no ozone data reported.

<sup>9</sup> *See* EPA [memo](#) dated Oct. 1, 2015; *see also* [guidance](#) dated Feb. 25, 2016.

<sup>10</sup> The CAA established ozone classification and attainment dates for the initial ozone standards of 3 years for "Marginal," 6 years for "Moderate," 9 years for "Serious," 15 years for "Severe," and 20 years for "Extreme." 42 U.S.C. § 7511. These deadlines have applied to subsequent ozone standards. *See, e.g.* [NRDC v. EPA](#) (Case No. 12-1321, D.C. Circuit, Dec. 23, 2014).

States with areas designated to be “nonattainment” will become subject to new emissions control and transportation conformity requirements, and must develop emission inventories and implement a preconstruction permitting program.<sup>11</sup> These states will also have an obligation to submit State Implementation Plans (SIPs) that may include Infrastructure and Transport SIPs by October of 2018; for States classified “Moderate” or higher, they will also be required to submit attainment plans in the 2020 to 2021 timeframe.<sup>12</sup> States with nonattainment areas would also have an obligation to address the interstate transport of air pollution, which will significantly contribute to nonattainment or interfere with maintenance of the ozone standard in other states. 42 U.S.C. § 110(a)(2)(D)(i)(I). If EPA finds a state or locality has failed to submit a satisfactory implementation plan, in whole or in part, the state or area is subject to sanctions and the imposition of a Federal plan by EPA. 42 U.S.C §§ 179, 110(c).

For areas designated to be in “nonattainment,” even after monitored air data shows the area meets the standard, they continue to be designated as “nonattainment” areas until such time as EPA approves maintenance plans, which can take years.<sup>13</sup> A state requesting redesignation must submit a revision to its applicable SIP that provides for the maintenance of the standards for at least 10 years after the redesignation. 42 U.S.C. § 7505a(a). In addition, 8 years after redesignation of any area as an “attainment” area, the state must submit an additional revision to the applicable SIP for maintenance of the standard for another 10 years after the expiration of the initial 10 year period. 42 U.S.C. § 7505a(b). Accordingly, even after achieving the standard and being redesignated as “attainment,” these areas continue to be subject to EPA oversight as they implement maintenance plans and controls under anti-backsliding provisions for the next 20 years.<sup>14</sup>

For its 2015 ozone standards, EPA projects all but [14 counties](#) (excluding California) would come into compliance by 2025 under existing regulations and programs.<sup>15</sup> EPA provides

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<sup>11</sup> 42 U.S.C. §§ 7407, 7410, 7501-7511. For background on the SIP process, *see, e.g.*, [Basic Information](#); [Infrastructure SIP Requirements](#); [Guidance on Infrastructure SIP Elements under Clean Air Act Sections 110\(a\)\(1\) and 110\(a\)\(2\)](#); [SIP Development Process](#); [Nonattainment Area & OTR SIP Requirements](#); [SIP Efficiency & Effectiveness](#) Guidance Memos; [2008 Ozone NAAQS Transportation Conformity Guidance and Regulations](#). For background relating to permits, *see, e.g.* [Designations and Permitting Requirements for the 2015 Ozone Standards](#); [Majority Memorandum](#) for May 21, 2014 hearing.

<sup>12</sup> *See* [2015 Ozone NAAQS Timelines](#). States or localities will be required to meet the primary standard between 2020 to 2037, depending on the severity of the area’s ozone problem. If an area fails to meet its deadline, it will be reclassified to the next higher classification level unless the area is already Severe or Extreme, and be subject to stricter mandatory controls. 42 U.S.C. § 7511.

<sup>13</sup> *See* EPA [Redesignation and Clean Data Policy](#). *See also* EPA Sept. 4, 1992 [Memo](#).

<sup>14</sup> *See* EPA [Redesignation and Clean Data Policy](#).

<sup>15</sup> In a fact sheet accompanying the final rule establishing the 2015 ozone standards, EPA states: “[the vast majority of U.S. counties will meet the \[2015 ozone standards\] by 2025 just with the rules and programs now in place or underway.](#)” *See also* [Counties Projected to Violate the 2015 Primary Ground-Level Ozone Standard in 2025](#). The 14 counties include: Larimer County, CO (71ppb); ii) Jefferson County, CO (71ppb); Tarrant County, TX (73ppb); Harris County, TX (74ppb); Brazoria County, TX (75ppb);

an annualized cost estimate only for 2025, estimating [\\$1.4 billion](#) (excluding California), and for California an additional [\\$800 million](#) post-2025.<sup>16</sup> In making its annualized cost estimates, the agency projects “unidentified controls” would be needed in some areas to meet a 70 ppb standard, including for 100 percent of the NO<sub>x</sub> emissions reductions needed in California.<sup>17</sup> In its cost estimate, EPA does not include the costs associated with complying with the 2008 standards, which the agency previously estimated would be [\\$7.6 billion to \\$8.8 billion](#) in 2020.<sup>18</sup>

Because the 2008 ozone standards have not been revoked by the agency, states now face the prospect of implementing two different ozone standards simultaneously. Prior to EPA’s decision to issue the 2015 standards, [nearly 700 national, state, and local organizations and stakeholders](#) had requested that EPA retain the 2008 standards and not establish a new additional lower standard. In comments on the proposed rule, [many State environmental regulators](#) also raised concerns about the role of background ozone, both naturally-occurring and internationally transported contributions, and about the limitations to the Clean Air Act tools that EPA had highlighted for regulatory relief to address background ozone.<sup>19</sup>

In addition to concerns relating to the implementation of multiple ozone standards simultaneously, general concerns with the NAAQS program have also been raised by state regulators.<sup>20</sup> These have included concerns regarding the current 5-year timeline for review of NAAQS,<sup>21</sup> as well as the failure of the agency to consider the likely technological feasibility or

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Sheboygan County, WI (71ppb); Jefferson County, KY (71ppb); Allegheny County, PA (71ppb); Harford County, MD (73ppb); Richmond County, NY (72ppb); Queens County, NY (71ppb); Suffolk County, NY (73ppb); Fairfield County, CT (72ppb); New Haven County, CT (71ppb).

<sup>16</sup> EPA’s cost estimate in the final rule is significantly lower than its estimate in the proposed rule, where it estimated costs for a 70 ppb standard to be \$3.9 billion in 2025. See [RIA](#) for Proposed Rule at ES-14, ES-15.

<sup>17</sup> See [RIA](#) for Final Rule at Table 4-9 at 4-40, 4A-5 at 4A-6 and 4A-6 at 4A-6; Tables 3-9 and 3-10 (California) at 3-24.

<sup>18</sup> See EPA [Fact Sheet](#) for 2008 Final Revisions to the NAAQS for Ozone.

<sup>19</sup> See, e.g. [State Environmental Agency Perspectives on Background Ozone and Regulatory Relief](#) (June 2015).

<sup>20</sup> [Clean Air Act Forum \(Part I\)](#); [Clean Air Act Forum \(Part II\)](#); [Clean Air Act Forum \(Part III\)](#).

<sup>21</sup> Under the CAA, EPA is required to complete a review of every NAAQS every 5 years. 42 U.S.C. § 7409. Many air regulators have raised concerns that the review time should be extended. See, e.g. Clean Air Act Forum [Response](#) of Thomas Burak, New Hampshire Dept. of Env. Services, July 27, 2012 (“Timing issues can also be challenging: often states are working on SIPs for multiple pollutants for which EPA had established different compliance deadlines. At the same time, EPA may be revising the NAAQS for a particular pollutant, leading to a constant state of flux in which the states and individual sources must try to reconcile complex and potentially conflicting requirements.”); [Response](#) of Paul Tait, Southeast Michigan Council of Governments, July 31, 2012 (“The CAA calls for setting standards every five years. While this may have made sense in the 1972, it poses serious challenges today.”); [Response](#) of

potential adverse effects associated with implementing revised standards,<sup>22</sup> and failure to issue timely implementing regulations and guidance.<sup>23</sup>

States, furthermore, also face other Clean Air Act [deadlines](#) during the period 2016 to 2021. *See* Appendix 2. These converging deadlines to comply with other regulations, a number of which also impose significant compliance costs, including the EPA's 2012 particulate matter

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Teresa Marks, Arkansas Dept. of Env. Quality, July 31, 2012 (“Five years may not allow for enough time for new technology or science to be fully developed . . . With more time between review processes, the States could have adequate time to develop proper SIPs and meet federal deadlines.”); [Response](#) of Martha Rudolph, Colorado Department of Public Health and Environment, Nov. 23, 2012 (“[T]he ambitious schedule for evaluating and promulgating NAAQS revisions every five years has created an inefficient planning process”); [Response](#) of Scott J. Nally, Director of Ohio EPA, Aug. 2, 2012 (“We would recommend a minimum of ten years for the review and possible changes of the ambient air quality standards”); [Response](#) of Susan Hildebrand, Texas Council on Env. Quality (“While the concept of a five year review may sound reasonable, in practice it has not served as intended.”); [Response](#) of Michael Krancer, Pennsylvania Dept. of Env. Protection, Nov. 29, 2012 (“Development of the NAAQS on an interval of five years (Section 109(d)(1)) has created significant resource burdens for both EPA and the states. Furthermore, the cascading standards can create confusion for the public because states and EPA continue to work on [SIP] revisions, determinations of attainment for one standard, while the Air Quality Index is based on another. NAAQS review intervals should be lengthened to 10 years”); [Response](#) of Robert Martineau, Jr. Tennessee Dept. of Env. and Conservation, Nov. 29, 2012 (“[T]he review period for the NAAQS needs to be lengthened from the current five (5) year cycle. A ten (10) year cycle should be considered.”).

<sup>22</sup> [Section 109\(d\)\(2\)\(C\)\(iv\)](#) of the CAA expressly requires that the Clean Air Scientific Advisory Committee (CASAC) “advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.” 42 U.S.C. 7409(d)(2)(C)(iv). On May 20, 2015, the Government Accountability Office issued a [report](#) indicating CASAC has never provided such advice because EPA has never requested it, and that EPA has no plans to ask CASAC to provide advice on potential adverse effects. *See* [GAO Report](#). Concerns have been raised regarding the agency’s failure to implement this statutory provision. *See, e.g.* May 14, 2014 [Letter](#) from Senator Vitter and [Response](#) from Louisiana Dept. of Environmental Quality, [Response](#) from Mississippi Dept. of Environmental Quality; [Response](#) from North Carolina Department of Environment and Natural Resources; [Response](#) from Texas Commission on Environmental Quality.

<sup>23</sup> EPA’s lack of timely implementing regulations and guidance has raised concerns and challenges for States. *See, e.g.* Clean Air Act Forum [Response](#) of Teresa Marks, Arkansas Dept. of Env. Quality (“Too often ‘standards’ are promulgated without the technical implementation rules in place. This places States in an extremely difficult position—that is to assert that the infrastructure will be in place timely and revise the SIP or other program requirements without the real tools to implement the new requirements.”); [Response](#) of Susan Hildebrand, Texas Council on Env. Quality, July 31, 2012 (“A common complaint of state regulators is the failure of EPA to provide guidance contemporaneously with the promulgation of a new NAAQS or other standard”); [Response](#) of Martha Rudolph, Colorado Department of Public Health and Environment, Nov. 23, 2012 (“The absence of timely implementation guidance produces a lack of clarity on SIP expectations, and often causes considerable uncertainty in the planning process, because states are reluctant to proceed with expensive technical planning activities that are later superseded by belated guidance that may differ significantly from the states’ approach”).

standards for which EPA has not yet finalized [implementing regulations](#), and 2010 sulfur dioxide standards for which the agency has required multiple rounds of designation submissions and is still in the process of finalizing [implementing regulations and guidance](#).<sup>24</sup>

#### IV. LEGISLATION

[H.R. 4775](#) was introduced on March 17, 2016, by Rep. Pete Olson (R-TX), together with Rep. Bill Flores (R-TX), Rep. Bob Latta (R-OH), and House Majority Whip Steve Scalise (R-LA). House Majority Leader Kevin McCarthy (R-CA) and Rep. Henry Cuellar (D-TX) are also original cosponsors of the bill. Provisions include the following:

Section 1. Short Title: This section provides the short title of “Ozone Standards Implementation Act of 2016.”

Section 2. Facilitating State Implementation of Existing Ozone Standards: This section provides a schedule for implementation of the national ambient air quality standards (NAAQS) for ground-level ozone published in 2015. Section 2(a) provides that states shall submit designations to implement the 2015 NAAQS for ground-level ozone not later than Oct. 26, 2024, the Administrator of the Environmental Protection Agency (EPA) shall promulgate final designations with respect to those standards not later than Oct. 26, 2025, and states shall submit implementation plans not later than Oct. 26, 2026.

Section 2(b)(1) provides the standards shall not apply to the review and disposition of a preconstruction permit application required under part C or D of title I of the Clean Air Act (42 U.S.C. 7470 et seq.) if the Administrator or the state, local, or tribal permitting authority, as applicable, has determined the application to be complete prior to the date of promulgation of final designation of an area, or has published a public notice of a preliminary determination or draft permit before the date that is 60 days after the date of promulgation of final designation.

Section 2(b)(2) provides that the section shall not be construed to eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable, or limit the authority of a state, local, or tribal permitting authority to impose more stringent emissions requirements than the NAAQS.

Section 3. Facilitating State Implementation of National Ambient Air Quality Standards: This section includes provisions to facilitate more efficient implementation of NAAQS by states.

Section 3(a)(1) would extend the current NAAQS review cycle for criteria pollutants from 5 years to 10 years. Section 3(a)(2) would provide that no revision of the ozone standards shall be proposed prior to Oct. 26, 2025.

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<sup>24</sup> See, e.g. EPA [Guidance and Data](#); March 20, 2015 [Fact Sheet](#); February 2016 [Draft SO<sub>2</sub> NAAQS Designations Modeling Technical Assistance Document](#); February 2016 [Draft SO<sub>2</sub> NAAQS Designations Source-Oriented Monitoring Technical Assistance Document](#).

Section 3(b) provides that the Administrator, when establishing or revising a NAAQS, may consider, as a secondary consideration, likely technological feasibility.

Section 3(c) provides that the Administrator, prior to establishing or revising a NAAQS, shall request, and the Clean Air Scientific Advisory Committee shall provide, the advice provided for in CAA Section 109(d)(2)(C)(iv) regarding any adverse public health, welfare, social, economic, or energy effects, which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

Section 3(d) provides that the Administrator, when establishing or revising a NAAQS, shall concurrently publish implementing regulations and guidance as necessary to assist states, permitting authorities and permitting applicants, and that the new or revised NAAQS shall not apply to preconstruction permit applications until such final regulations and guidance have been published.

Section 3(e) provides that in Extreme ozone nonattainment areas, contingency measures are not required to be included in nonattainment plans.

Sections 3(f)(1) and (2) ensure that economic feasibility, in addition to technological achievability, be taken into consideration in certain requirements for plans for Moderate or Serious ozone nonattainment areas. Section 3(f)(3) eliminates certain demonstration requirements in approving provisions of an implementation plan for an Extreme ozone nonattainment and which anticipates development of new control techniques or improvement of existing control technologies.

Section 3(g) provides that, for particulate matter nonattainment areas, the milestones that must be included in plans to show reasonable further progress must take into account technological achievability and economic feasibility.

Section 3(h) provides that with respect to air quality monitoring data influenced by exceptional events, an exceptional event may include stagnation of air masses that are not ordinarily occurring, and may also include a meteorological event involving high temperatures or lack of precipitation.

Section 3(i) provides that within 2 years of enactment of the Act, the Administrator, in consultation with states, shall submit to Congress a report on (i) the extent to which foreign sources of air pollution impact the area designations and the attainment and maintenance of NAAQS; (ii) the EPA's procedures and timelines for disposing of petitions relating to emissions from sources emanating outside the United States that are submitted pursuant to section 179B(b) of the Clean Air Act (CAA); and (iii) the total number of such petitions received by the agency and related information; and (iv) whether the Administrator recommends any statutory changes to facilitate more efficient review and disposition of such petitions.

Section 4. Definitions: This section contains the following definitions:

(1) The term "Administrator" means the EPA Administrator.

- (2) The term “Best Available Control Technology” has the meaning given that term in CAA Section 169(3).
- (3) The term “Lowest Achievable Emission Rate” has the meaning given that term in CAA Section 171(3).
- (4) The term “national ambient air quality standard” means a national ambient air quality standard promulgated pursuant to CAA Section 109.
- (5) The term “Preconstruction Permit” means a permit that is required under part C or D of title I of the CAA for the construction or modification of a major emitting facility or major stationary source, and includes any such permit issued by the EPA or a state, local or tribal permitting authority.
- (6) The term “2015 Ozone Standards” means the national ambient air quality standard for ozone published in the Federal Register on October 26, 2015 (80 Fed. Reg. 65292).

## **V. ISSUES**

The following issues relating to EPA’s proposed rule may be examined at the hearing:

- The provisions of H.R. 4775;
- Practical challenges to implementing existing ozone standards;
- Potential improvements to the NAAQS process;
- Impacts of revised NAAQS on jobs and economic growth; and
- Costs of revised NAAQS to households and consumers.

## **VI. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact Mary Neumayr or Tom Hassenboehler of the Committee staff at (202) 225-2927.

## APPENDIX 1

### **States with Counties That Violate 2015 Ozone Standards Based on Monitored Air Quality Data from 2012-2014**

Alabama  
Arizona  
Arkansas  
California  
Colorado  
Connecticut  
Delaware  
District of Columbia  
Georgia  
Illinois  
Indiana  
Kansas  
Kentucky  
Louisiana  
Maine  
Maryland  
Massachusetts  
Michigan  
Mississippi  
Missouri  
Nevada  
New Jersey  
New Mexico  
New York  
North Carolina  
Ohio  
Oklahoma  
Pennsylvania  
Rhode Island  
Tennessee  
Texas  
Utah  
Virginia

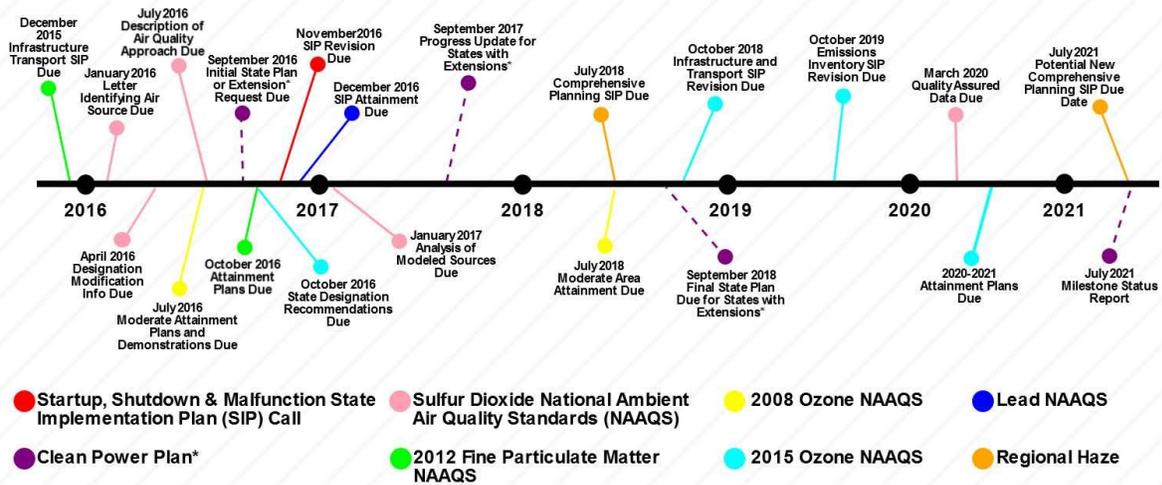
Source: EPA “County-level Design Values for the 2015 Ozone Standards” available at  
<https://www.epa.gov/sites/production/files/2016-03/documents/20151001datatable20122014.pdf>

## APPENDIX 2

April 2016



### State Clean Air Act Deadlines, 2016 - 2021



\* On February 9, 2016, the U.S. Supreme Court stayed implementation of the Clean Power Plan. According to U.S. EPA: "EPA firmly believes the Clean Power Plan will be upheld when the merits are considered because the rule rests on strong scientific and legal foundations. For the states that choose to continue to work to cut carbon pollution from power plants and seek the agency's guidance and assistance, EPA will continue to provide tools and support."

The Association of Air Pollution Control Agencies (AAPCA) is a national, consensus-driven non-profit organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. You can find more information about AAPCA at: <http://www.cleanairact.org>

Source: [http://www.csg.org/aapca\\_site/documents/aapca-deadlines-update-april-2016.pdf](http://www.csg.org/aapca_site/documents/aapca-deadlines-update-april-2016.pdf).