

NAAQS AND PERMITTING PROGRAM UPDATES

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OVERVIEW

- NAAQS Implementation Updates
 - Ozone
 - Exceptional Events
 - Fine Particulate Matter (PM_{2.5})
 - Sulfur Dioxide (SO₂)
 - Lead
- Final Action on Startup, Shutdown, and Malfunction (SSM) Policy for SIPs and SIP Call
- Interstate Transport
- Permitting



NAAQS Reviews: Status Update

(as of June 2016)

	Ozone	Lead	Primary NO ₂	Primary SO ₂	Secondary NO ₂ and SO ₂	PM	CO
Last Review Completed (final rule signed)	Mar 2008	Oct 2008	Jan 2010	Jun 2010	Mar 2012	Dec 2012	Aug 2011
Recent or Upcoming Major Milestone(s)¹	<u>Nov 25, 2014</u> Proposed rule <u>Oct 1, 2015</u> Final rule	<u>May 2014</u> Final PA <u>Dec 2014</u> Proposed decision <u>2016</u> Final decision	<u>Jan 2016</u> Final ISA <u>Summer 2016</u> 1 st Draft PA/REA	<u>Jan 2016</u> CASAC review of 1 st Draft ISA <u>April 6 2016</u> CASAC teleconference <u>Fall/Winter 2016</u> 2 nd Draft ISA REA Planning Document	<u>Dec 2015</u> CASAC review draft IRP <u>Summer 2016</u> Final IRP <u>Fall 2016</u> 1 st Draft ISA REA Planning Document	<u>May 23, 2016</u> CASAC teleconference to review draft IRP	TBD ²

Additional information regarding current and previous NAAQS reviews is available at: <http://www.epa.gov/ttn/naaqs/>

¹ IRP – Integrated Review Plan; ISA – Integrated Science Assessment; REA – Risk and Exposure Assessment; PA – Policy Assessment

² TBD = to be determined



Anticipated NAAQS Implementation Milestones

(as of June 2016)

Pollutant	Final NAAQS Date	Designations Effective	Infrastructure SIP Due	Attainment -Plans Due	Attainment Date
PM _{2.5} (2006)	Oct 2006	Dec 2009	Oct 2009	Dec 2014	Dec 2015 (Mod) Dec 2019 (Ser)
Pb (2008)	Oct 2008	Dec 2010-2011	Oct 2011	June 2012-2013	Dec 2015-2016
NO ₂ (2010) (primary)	Jan 2010	Feb 2012	Jan 2013	N/A	N/A
SO ₂ (2010) (primary)	June 2010	Oct 2013 (+3 rounds)	June 2013	April 2015 (2018, 2019, 2022)	Oct 2018 (2021, 2023, 2026)
Ozone (2008)	Mar 2008	July 2012	Mar 2011	Mid 2015-2016	Mid 2015-2032
PM _{2.5} (2012)	Dec 2012	Apr 2015	Dec 2015	Oct 2016 (Mod)	Dec 2021 (Mod) Dec 2025 (Ser)
Ozone (2015)	Oct 2015	Dec 2017	Oct 2018	Dec 2020-2021	2020-2037



2008 Ozone NAAQS Implementation

- Final 2008 Ozone NAAQS SIP Requirements Rule: “Implementation of the 2008 NAAQS for Ozone: State Implementation Plan Requirements” published March 6, 2015 (80 FR 12264)
 - Provides guidance on nearly all aspects of the attainment planning requirements for designated nonattainment areas
 - Revoked the 1997 NAAQS (effective April 6, 2015) and established anti-backsliding requirements
- Key implementation dates for nonattainment areas:
 - Emissions inventories, emissions statement rules and RACT SIPs due July 2014
 - Attainment plans and demonstrations due July 2015 (Moderate) or July 2016 (Serious and above)
 - Marginal area attainment date July 20, 2015 (attainment determined by 2012-2014 air quality data)
 - Moderate area attainment date July 20, 2018 (2015-2017 air quality data)
- Litigation: South Coast Air Quality Management District and environmental petitioners (Sierra Club et al.) challenged various aspects of the 2008 SIP Requirements Rule, including creditability of reasonable further progress (RFP) control measures, baseline years of RFP, and anti-backsliding requirements
 - Petitioners’ opening briefs filed March 17, 2016; EPA response brief due August 1, 2016



2008 Ozone NAAQS Implementation: Actions for Marginal Nonattainment Areas

- Marginal area attainment date was July 20, 2015
- On April 11, 2016 (81 FR 26697), EPA finalized several actions for 36 Marginal areas under the 2008 ozone NAAQS:
 - Determinations of attainment by the attainment date for 17 areas
 - One-year extensions of the attainment date for 8 areas
 - Reclassification to Moderate due to failure to attain by the attainment date for 11 areas
 - Moderate area SIPs due January 1, 2017
- Attainment deadline for 8 areas with 1-year extensions is July 20, 2016



Anticipated Schedule for 2015 Ozone NAAQS Implementation Rules/Guidance/Tools

Action	After NAAQS Promulgation	(Actual) and Planned Dates
EPA finalized 2015 Ozone NAAQS, Monitoring rules, Exceptional Event Demonstration Schedule, and PSD grandfathering.	Upon promulgation	(October 1, 2015)
EPA proposed Exceptional Events Rule revisions and issues draft Wildfire/Ozone Guidance		(November 10, 2015)
EPA issued Area Designations for the 2015 Ozone NAAQS	4 months	(February 25, 2016)
States and tribes submit recommendations for ozone designations to EPA	12 months	October 1, 2016
EPA publishes interstate ozone transport modeling	12 months	Fall 2016
EPA finalizes Exceptional Events Rule revisions and issues Wildfire/Ozone Guidance		Summer 2016

Intended Schedule for 2015 Ozone NAAQS Implementation Rules/Guidance/Tools
(table continued)

Action	After NAAQS Promulgation	(Actual) and Planned Dates
EPA proposes Nonattainment Area SIP rules/guidance (including area classifications, SIP due dates, and nonattainment NSR provisions)	12 months	September 2016
EPA finalizes Designations, Classifications, and nonattainment area SIP rules/guidance	24 months	October 2017
States submit Infrastructure and Transport SIPs	36 months	October 2018
States submit Attainment plans	5-6 years	2020-2021
Nonattainment Area Attainment Dates (Marginal – Extreme)	5-22 years	2020-2037

2015 Ozone NAAQS: Current and Upcoming Implementation-Related Rules/Guidance/Activities

- Area designations guidance (including assessing rural transport areas) issued to states in February 2016
 - <https://www.epa.gov/ozone-designations/ozone-designations-guidance-and-data>
- Proposed rule to update, where necessary, the existing ozone NAAQS implementation regulations targeted for September 2016 (more on next slide); final October 2017
- White paper on background ozone issued December 2015; workshop held in February 2016
 - <https://www.epa.gov/ozone-pollution/epa-workshop-background-ozone-february-24-and-25-2016>
- PSD permitting:
 - Final update to Guideline on Air Quality Models (Appendix W to 40 CFR Part 51) (summer 2016)
 - Guidance on compliance demonstration tools:
 - Ozone and PM_{2.5} significant impact level (SIL)
 - Model emissions rates for precursors (MERPs) (late summer 2016)
- Update to transportation conformity guidance specific to areas that are nonattainment for 2015 NAAQS (Fall 2017)



Key Issues to be Addressed in 2015 Ozone NAAQS SIP Requirements NPRM

1. Nonattainment area classification thresholds
2. Revocation of the 2008 ozone NAAQS
3. RFP – milestone compliance demonstrations
4. RACT – submission and implementation deadlines
5. NNSR – interprecursor trading



2015 Ozone NAAQS: Anticipated Timeline for Designations Process

Milestone	Date
The EPA promulgates 2015 Ozone NAAQS rule	October 1, 2015
The EPA issues designations guidance	February 25, 2016
States and tribes submit recommendations for ozone designations to EPA	No later than October 1, 2016
The EPA notifies states and tribes concerning any intended modifications to their recommendations (120-day letters)	No later than June 2, 2017 (120 days prior to final ozone area designations)
The EPA publishes public notice of state and tribal recommendations and the EPA's intended modifications, if any, and initiates 30-day public comment period	On or about June 9, 2017
End of 30-day public comment period	On or about July 10, 2017
States and tribes submit additional information, if any, to respond to the EPA's modification of a recommended designation	No later than August 7, 2017
The EPA promulgates final ozone area designations	No later than October 1, 2017



Exceptional Events

- Exceptional Events Rule Revisions and Wildfire Guidance Development
 - November 20, 2015 – Notice of Proposed Rulemaking for rule revisions and Notice of Availability for draft guidance published in Federal Register (80 FR 72840)
 - Summer 2016 – sign final rule and issue final guidance document

- Communication and Outreach
 - Summer/Fall 2016
 - Additional draft guidance document(s) available for stakeholder review
 - Revisions to 2013 Interim Exceptional Events Implementation Guidance
 - Continued development of exceptional events tools (e.g., website, templates)
 - Implementation workshop(s)/webinars for states, tribes, and other affected stakeholders following promulgation



1997 and 2006 PM_{2.5} NAAQS Implementation

- EPA continues to implement the PM_{2.5} NAAQS under existing guidance
 - 1992 General Preamble and 1994 Addendum provide EPA's interpretation of subpart 4 requirements for PM₁₀ NAAQS
 - Deadline and Classifications Rule (issued June 2, 2014; litigation ongoing) clarified that all nonattainment areas at the time were Moderate and set a deadline of December 31, 2014, for states to submit revised SIP submissions to meet subpart 4 requirements
- 2006 PM_{2.5} NAAQS Moderate area attainment date was December 31, 2015
 - EPA has statutory duty to make determinations of attainment by the attainment date within 6 months after the attainment date (based on 2013-15 data)
 - Areas that failed to attain by the attainment date will be reclassified to Serious by operation of law and will need to submit a revised SIP within 18 months that includes BACM-level controls
 - EPA continues to work with states with data issues, but EPA anticipates being able to make determinations of attainment for all 2006 areas based on available data
- On June 2, 2016, the US District Court for the Northern District of California agreed to a consent decree settlement between the EPA and the Center for Biological Diversity, Center for Environmental Health, and Neighbors for Clean Air to issue final action on certain states' 2006 PM_{2.5} NAAQS attainment plans, NNSR plans, and infrastructure SIPs, and/or findings of failure to submit.
 - Approved consent decree established dates for EPA to take final action on state submissions and/or for states to make overdue submissions (affects 6 states: AZ, CA, ID, MT, OR, UT)



PM_{2.5} NAAQS Implementation: SIP Requirements NPRM

- EPA proposed rule for SIP requirements that would apply to current and future PM_{2.5} nonattainment areas (published on March 23, 2015, 80 FR 15340)
- Proposal sought comment on all aspects of implementation under subparts 1 and 4, including:
 - Reasonably Available Control Measures (RACM) and Best Available Control Measures (BACM)
 - Reasonable further progress and quantitative milestones
 - Contingency measures
 - Attainment date extension criteria
 - Nonattainment New Source Review requirements
 - Precursor policy
- Comment period closed on May 29, 2015. About 50 substantive comments mostly received from state and local governments, but also industry, agricultural and environmental groups
- Final rule will apply to all areas designated nonattainment for the 1997, 2006 and 2012 PM_{2.5} NAAQS, and any additional areas designated nonattainment for these or future revised PM_{2.5} NAAQS
- Final rule projected for summer 2016; currently under OMB review



2010 SO₂ NAAQS Implementation

- EPA revised primary SO₂ standard on June 3, 2010 (75 ppb/1-hour)
- 1-hr SO₂ NAAQS NAA SIP elements guidance issued on April 24, 2014
- Attainment plans for 29 areas currently designated nonattainment were due April 4, 2015
- EPA issued findings of failure to submit (FFS) attainment plans for 16 areas in 11 states, effective April 18, 2016
 - Sanctions may apply if affected states do not submit complete SIPs within certain time periods stipulated under the Clean Air Act
 - Affected states may be subject to Federal Implementation Plans (FIPs) if they do not submit, and the EPA does not approve, SIPs for listed areas within 24 months (April 18, 2018)

2010 SO₂ NAAQS Designations

- Consent decree entered on March 2, 2015, by U.S. District Court for Northern California “triggered” the following deadlines consistent with a settlement with original plaintiffs:
 - July 2, 2016 - The EPA must complete a round of designations for areas associated with approximately 70 EGUs in 24 states and any undesignated areas with violating monitors (“Round 2” designations)
 - December 31, 2017 - The EPA must complete an additional round of designations for any area a state has not elected to monitor starting January 1, 2017 per the provisions of the DRR
 - December 31, 2020 - The EPA must complete all remaining designations (primarily expected to be areas where states have elected to monitor per the provisions of the DRR)

2010 SO₂ Designations Due in July 2, 2016 Under Consent Decree

What is covered in “Round 2”:

- Areas where 2013-15 data indicate monitored violations – only Hawaii County, HI
- Areas where there are sources (electric power plants) that as of March 2, 2015, have not been “announced for retirement,” and meet one of the following emissions thresholds:
 - 16,000 tons of emitted in 2012 or
 - 2,600 tons of SO₂ emitted in 2012 with an average emission rate of at least 0.45 pounds of SO₂ per mmBtu
- In 2015, EPA notified 24 states that 69 sources met these criteria

Schedule for Completing 2010 SO₂ NAAQS Designations Due on July 2, 2016

Milestone	Date
Court Order	March 2, 2015
Impacted states may submit updated recommendations and supporting information for area designations to the EPA	No later than September 18, 2015
The EPA notifies impacted states concerning any intended modifications to their recommendations (120-day letters)	February 16, 2016
End of 30-day public comment period	March 31, 2016
Impacted states provide additional information to demonstrate why an EPA modification is inappropriate	April 19, 2016
The EPA promulgates final SO ₂ area designations (no later than 16 months from Court Order)	No later than July 2, 2016

EPA's Intended Designations for SO₂ Areas Subject to the July 2, 2016 Deadline

Intended Designation	Number of Areas
Nonattainment	12
Unclassifiable	23
Unclassifiable/Attainment	31

- On or about February 16, 2016, the EPA notified representatives of 24 states of intended designations for areas subject to the July 2, 2016, court-ordered deadline
- A notice of availability and public comment period was published in the *Federal Register* on March 1, 2016 (81 FR 10563)
 - The public comment period ended on March 31, 2016
- States were asked to submit additional information to the EPA, should they wish, by April 19, 2016, for consideration

SO₂ NAAQS Data Requirements Rule

- Final Data Requirements Rule, issued August 10, 2015, established requirements for air agencies to monitor or model ambient SO₂ levels in areas with largest sources of SO₂ emissions to help implement the 1-hour SO₂ NAAQS
- At a minimum, air agencies must characterize air quality around sources that emit 2,000 tons per year (tpy) or more of SO₂ or adopt enforceable emission limits that ensure that the source will not emit more than 2,000 tpy of SO₂
- Final rule established a schedule for air agencies to characterize air quality and to provide that air quality data to the EPA (does NOT establish designations schedule)
- New webpage provides information on listed sources and communication between states and EPA
 - <https://www3.epa.gov/airquality/sulfurdioxide/drr.html>

SO₂ NAAQS Data Requirements Rule: Implementation Timeline

- **January 15, 2016:** Air agency identifies applicable sources (i.e., those exceeding threshold and other sources for which air quality will be characterized)
 - EPA notified states in March 2016 that review of source lists was complete. In a few cases, EPA added sources to characterization list
- **July 1, 2016:** Air agency specifies (for each applicable source) whether it will monitor air quality, model air quality, or establish an enforceable limit
 - Air agency also accordingly submits a revised monitoring plan, modeling protocols, or descriptions of planned limits on source emissions to less than 2,000 tpy
- **January 2017**
 - New monitoring sites must be operational by January 1, 2017
 - Modeling analyses must be submitted to EPA by January 13, 2017
 - Documentation of federally enforceable emission limits and compliance must be submitted to EPA by January 13, 2017
- **Early 2020:** Monitoring sites will have 3 years of quality-assured data which must be submitted to EPA

Preparing for Remaining Designations

- Remaining designations as specified by the CD:
 - December 31, 2017 - any area a state has not elected to monitor starting January 1, 2017
 - December 31, 2020 - all remaining designations
- DRR compliance will put states in best position for an orderly designations process for these remaining rounds.
 - July 1: Monitoring plan and modeling protocol submittals
 - January 2017: Monitors operational (January 1); modeling analyses submitted (January 13)



Steps for Success in SO₂ Rounds 3 & 4

- Schedule is tight – Communication between states & regions is critical
 - Modeling protocols & monitoring plans can be complicated, so early engagement between state and region is important
 - Approvals by regions after July submittals need to occur quickly, so no surprises at submittal
 - Quick approvals allow for time to perform modeling or install monitors by January 2017 deadline
- EPA (HQ & Regions) is ready to engage now on both of these issues to work towards successful submittals in January & committed to quick reviews
 - Early partial approval of SO₂ portion of monitoring plan possible
 - Several Model Clearinghouse approvals of adj u* already, Appendix W final likely to be delayed
- We recognize the uniqueness of this source characterization and the possible case-by-case analysis needed and we are ready to work with you in making this successful



Status of Transport Rule Efforts

- Status of the Cross-State Air Pollution Rule (CSAPR)
 - EPA began implementation of this rule on January 1, 2015. It addresses interstate transport obligations for the 1997 ozone, 1997 PM_{2.5} and 2006 PM_{2.5} NAAQS
 - On July 28, 2015, the D.C. Circuit issued its opinion on the remaining issues raised with respect to CSAPR. While the rule was largely upheld, the budgets for some states were remanded.
- Proposed CSAPR Update Rule to address the 2008 ozone NAAQS
 - EPA proposed the CSAPR Update Rule in November 2015 to address the 2008 ozone NAAQS. The proposal focuses on near-term EGU NO_x reductions achievable by 2017 in the affected states
 - The proposal also addressed the court's remand of the CSAPR Phase 2 NO_x ozone budgets
 - The comment period closed on February 1, 2016
 - EPA plans to finalize this rule in the summer 2016
 - Additional information at <http://www.epa.gov/airtransport/>
- EPA is considering how best to help upwind states address the good neighbor provision for the 2015 Ozone NAAQS
 - EPA plans to share modeling in the fall of 2016 to help inform SIP development
 - We welcome suggestions regarding additional steps EPA could take



Response to SSM Petition, Final Policy and SIP Call

- Final action was signed May 22, 2015, in response to a Sierra Club petition for rulemaking concerning SIP provisions for treatment of excess emissions occurring during periods of startup, shutdown and malfunction (SSM)
 - Final notice restates EPA's SSM Policy as it applies to SIPs with one change regarding affirmative defense (AD) provisions
- SIP Call applies to 36 states (45 jurisdictions), the majority of which were named in the original petition
- Deadline for state action to remove provisions from their rules and make corrective SIP submissions is November 22, 2016
- Challenge from multiple parties filed with D.C. Circuit



Draft Guidance on SILs for Ozone and PM_{2.5}

- Guidance will establish Significant Impact Levels (SILs) for Ozone and PM_{2.5}
- States have discretion to not use SILs
- Draft Guidance at OMB for interagency review
- Projected release date for final guidance Fall 2016



E-Notice Rule for NSR, Title V and OCS Permitting

- The purpose of the rulemaking is to remove the mandatory newspaper publication requirement for air permits and provide electronic notice as an effective and adequate standard for public notice
 - States have the discretion to continue using newspaper notice
- Consistent with Clean Air Act Advisory Committee Task Force Recommendations
- The rule was proposed December 21, 2015 (80 FR 81234)
 - Comment Period ended February 29, 2016
 - Most comments were supportive with only one comment from a newspaper organization opposing the rule
- Final rule projected in late-summer 2016



40 CFR Part 56 Amendments – Regional Consistency

- EPA's Part 56 regulations require that EPA's regulations and policies be applied consistently across all the regional offices
- Following the Sixth Circuit decision *in Summit Petroleum Corp. v. EPA* (Title V permit for an Oil and Gas Source) decision, EPA issued a guidance memo that instructed the Regions to continue to use the concept of functional interrelatedness when defining a source outside a 6th Circuit Court state (i.e., MI, OH, KY, TN)
- D.C. Circuit vacated the guidance memo saying that the memo conflicted with our Part 56 regulations (*NEDACAP v. EPA*)
- Proposed Part 56 Amendments August 19, 2015 (80 FR 50250)
 - Provides an exception that would allow regions to deviate from national EPA policy when it is necessary to comply with a U.S. Circuit or District Court decision involving regional or locally applicable matters
 - Comment period ended November 3, 2015
 - Received 11 opposing comment letters from industry (no comments submitted by environmental groups or state or local governments)
- Final rule projected for summer 2016



Source Determination Rule for the Oil and Gas Sector

- On June 3, 2016, EPA published the final rule (81 FR 35622)
- The rule clarifies the meaning of “adjacent” that is used to determine the scope of a stationary source for purposes of the Prevention of Significant (PSD) and Nonattainment NSR (NNSR) preconstruction permitting programs and the scope of “major source” in the title V permit program in the onshore oil and natural gas sector
 - Part of the comprehensive Oil and Gas Strategy including NSPS, CTG and Indian Country FIP
- For more information visit <https://www3.epa.gov/airquality/oilandgas/actions.html>



Permit Rescission Rule

- On June 3, 2016, EPA published (81 FR 38640) the proposed rule to revise the “Permit Rescission” provision at 40 CFR 52.21(w)
 - No provisions currently exist for rescission in EPA rules for state programs (Part 51)
- Purpose of the rule is to ensure that EPA does not have to revise (w) whenever a court decision nullifies rules for which EPA issued permits
- Para (w) amended in 1987 as part of TSP-to-PM10 transition:
 - Changed applicability cutoff to 7/30/87. The 1987 date has served to sunset the provision’s applicability (which is the principal reason for the GHG permit step 2 rescission rule)
 - Public comment period closes on July 14, 2016



Removal of Emergency Provisions from Part 70 and 71

- Proposed rulemaking to remove the “emergency” affirmative defense (AD) provisions from title V regulations 40 CFR 70.6(g) and 71.6(g) was published on June 14, 2016 (81 FR 38645)
- This is a follow-up action to similar rulemakings including the 2015 SSM SIP Call which is intended to ensure that the EPA’s policy on AD is consistent across all CAA program areas, following the D.C. Circuit’s *2014 NRDC v. EPA* case
- EPA considers these title V AD provisions to be discretionary elements of state programs, as well as individual permits
- The EPA is taking comment on various implementation consequences relating to the proposed removal of the emergency affirmative defense provisions
 - The public comment period closes on August 15, 2016



Title V Permitting

- Title V Petitions Rulemaking
 - Increase transparency and stakeholder understanding of the petition process, as well as ensure that the Agency is able to efficiently address related programmatic and air quality issues
 - Proposal summer 2016
- Title V Program and Fee Evaluation Guidance
 - Satisfies EPA commitments in response to an Office of Inspector General report on title V fee oversight
 - Provides guidance for EPA regions on program and/or fee evaluations of state title V programs
 - Composed of tools, including procedural checklists, example questions for states, lists of available resources, and updated fee schedule guidance
 - Discretionary for EPA regions and no specific requirements for state programs
 - Consistent with the EPA's Cross-Media State Programs Health and Integrity Workgroup principles and best practices for oversight of State, local and tribal permitting programs
 - Scheduled for release in fall 2016



Regulatory Updates for GHG Permitting

- In April 2015, EPA issued a final rulemaking action revising EPA's PSD regulations to enable the EPA to rescind EPA-issued PSD permits
 - Direct Final (80 FR 26183); Parallel Proposal (80 FR 26210)
- In August 2015, EPA issued a final rulemaking to remove certain provisions from PSD and title V that were vacated as part of the D.C. Circuit's April 2015 Amended Judgment (80 FR 50199)
- EPA is working on a proposed rule to establish a significant emissions rate for GHGs under the PSD program; currently under OMB review
 - This proposed rulemaking will also propose the remaining changes to PSD and title V that are necessary to fully implement the D.C. Circuit's April 2015 Amended Judgment
 - Proposal is projected for summer 2016



Questions and Comments

