



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Kenneth Calvert  
Chairman, Subcommittee on Interior,  
Environment and Related Agencies  
Committee on Appropriations  
House of Representatives  
Washington, D.C. 20515

The Honorable Betty McCollum  
Ranking Member, Subcommittee on  
Interior, Environment and Related Agencies  
Committee on Appropriations  
House of Representatives  
Washington, D.C. 20515

The Honorable Lisa Murkowski  
Chairman, Subcommittee on Interior,  
Environment and Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

The Honorable Tom Udall  
Ranking Member, Subcommittee on  
Interior, Environment and Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

Dear Chairmen Calvert and Murkowski and Ranking Members McCollum and Udall:

Enclosed is the U.S. Environmental Protection Agency's Report to Congress that responds to the Joint Explanatory Statement accompanying the *Consolidated Appropriations Act, 2017* (P.L. 115-31), enacted May 5, 2017, which states:

*Within 90 days of the date of enactment of this Act, the Agency is directed to provide the Committees with a report examining the potential for administrative options to enable States to enter into cooperative agreements with the Agency that provide regulatory relief and meaningfully clean up the air.*

In this report, the EPA discusses past and present efforts to establish ozone cooperative agreements with states. The report also addresses statutory provisions of the Clean Air Act that the agency and states are currently implementing, or could potentially employ, to provide regulatory relief.

Please do not hesitate to contact me or Ed Walsh of my staff at (202) 564-4594 should you require any additional information on this report.

Sincerely,

  
David A. Bloom  
Acting Chief Financial Officer

Enclosure

# **Report to Congress on Administrative Options to Enable States to Enter into Cooperative Agreements to Provide Regulatory Relief for Implementing Ozone Standards**

This document provides Environmental Protection Agency's (EPA's) Report to Congress on "the potential for administrative options to enable states to enter into cooperative agreements with the Agency to provide regulatory relief and meaningfully clean up the air" with respect to ozone air quality, as required by the *Consolidated Appropriations Act, 2017*. In this report, EPA discusses past and present efforts to establish ozone cooperative agreements with states, as well as the statutory provisions of the Clean Air Act that the Agency and states are currently implementing, or could potentially employ, to provide regulatory relief.

## **Introduction**

Language in the *Consolidated Appropriations Act, 2017*, enacted May 5, 2017, instructed EPA to work on providing options to states for implementing ozone air quality standards. The report language indicates:

*National Ambient Air Quality Standards*— The Committee remains concerned about potentially overlapping implementation schedules related to the 2008 and 2015 standards for ground-level ozone. Because the Agency did not publish implementing regulations for the 2008 standard of 75 parts per billion [ppb] until February 2015 and then revised the standard to 70 ppb in October 2015, States now face the prospect of implementing two national ambient air quality standards for ozone simultaneously. Based on Agency data, the Committee expects a number of counties to be in non-attainment with both the 2008 standard and the 2015 standard. Additionally, Agency data suggests that a number of marginal non-attainment counties will meet the 2015 standard by 2025 due to other air regulations. In an effort to find the most sensible path to reduce ground level ozone, some flexibility must be granted to States that face the burden of implementing these potentially overlapping standards. Within 90 days of the date of enactment of this act, the Agency is directed to provide the Committee with a report examining the potential for administrative options to enable States to enter into cooperative agreements with the Agency that provide regulatory relief and meaningfully clean up the air.

The purpose of this document is to provide the 90-day report requested by Congress.

## **Background**

Under the Clean Air Act, states and the federal government have a shared duty to protect public health and the environment. According to Section 101 of the Act, states have primary responsibility for air pollution prevention and air pollution control, and the federal government has responsibility for developing cooperative federal, state, regional, and local programs to prevent and control air pollution. Specific Clean Air Act responsibilities include, for EPA, setting and periodically reviewing (and, if necessary, revising) national ambient air quality standards (NAAQS) and, for states, submission of plans which provide for "implementation, maintenance, and enforcement" of each NAAQS.

In March 2008, EPA lowered the NAAQS for ground-level ozone by revising the 8-hour primary ozone standard, designed to protect public health, to a level of 0.075 parts per million (ppm). The



previous standard, set in 1997, was 0.08 ppm. EPA also lowered the secondary 8-hour ozone standard, designed to protect public welfare, by revising it to the same level of 0.075 ppm as the revised primary standard. In September 2009, EPA announced that it would reconsider the 2008 ozone standards. In January 2010, EPA proposed to set different (lower) primary and secondary standards than those set in 2008, and placed implementation activities, including area designations, on hold pending the outcome of the reconsideration action. However, in September 2011, EPA deferred the decisions involved in the reconsideration until it completed its statutorily required periodic review of the ozone standards, which already was underway (as announced on September 29, 2008). At that time, EPA also announced its intention to move ahead with implementation of the 2008 ozone NAAQS.

Following the setting (or revision) of a NAAQS, the Clean Air Act calls for the following steps to implement that NAAQS:

- Designations: States first make recommendations to EPA for areas to be designated attainment (meeting the standards), nonattainment (not meeting the standards or contributing to areas not meeting the standards), and unclassifiable (insufficient information). After considering state recommendations, EPA promulgates designations. For the 2008 ozone standards, EPA promulgated designations in May 2012 (effective on July 20, 2012): 46 areas in 28 states were designated as nonattainment, 1 area as unclassifiable, and the rest of the country as unclassifiable/attainment. Nonattainment areas for ozone also are classified at the time of designation into one of five classifications relating to the severity of each area's ozone air quality problem.
- State Implementation Plans (SIPs): States must submit SIPs outlining how they will reduce pollution to meet and maintain the standards. Two types of SIPs are required for new or revised ozone standards, including the 2008 and 2015 ozone standards: (1) all states must submit an "infrastructure" plan, which addresses basic air quality management provisions of Section 110 of the Act and (2) for each nonattainment area, states must submit "nonattainment" plans, which address the requirements of Part D of the Act and show how they will meet the standards by the required attainment date.

Infrastructure SIPs are required to be submitted to the EPA 3 years after a standard is set (or revised), but in the case of the 2008 ozone standards, EPA recognized the delay resulting from its efforts to reconsider the standards and told states that it would not penalize them for late submitted plans. Currently, all but 1 state has submitted all of the infrastructure SIP requirements for the 2008 ozone standards and EPA has completed its approval of more than 75% of those SIP submissions. For several state plans, however, there is still a need to address completely the "Good Neighbor" requirement in Section 110(a)(2)(D) of the Act to address interstate transport of ozone emissions.

Nonattainment SIPs are due over the course of up to 4 years after an area is designated nonattainment (i.e., by July 2016 for the 2008 ozone standards). To assist states in developing their nonattainment SIPs, EPA issued a final SIP Requirements Rule for the 2008 ozone standards in early 2015. The Agency recognizes that the delay in issuing the SIP Requirements Rule may have impeded some states' abilities to complete their nonattainment planning obligations for these standards.

- Attainment of NAAQS: States with nonattainment areas are required to meet the standards in those areas by deadlines that vary based on the severity of the air quality problem in each area. The attainment date for nonattainment areas classified as Marginal for the 2008 ozone NAAQS was July 20, 2015. In 2016, EPA took several final actions related to attainment determinations for the 36 nonattainment areas classified as Marginal for the 2008 ozone standards – 23 of these areas attained by their attainment date and currently have no further planning obligations; 13 areas did not attain and were reclassified as Moderate. The 13 reclassified areas, along with the 10 areas initially classified as Moderate or above, are subject to future attainment dates.

In October 2015, EPA again lowered the NAAQS for ground-level ozone by revising the 8-hour primary and secondary ozone standards to a level of 0.070 parts per million (ppm). At that time, EPA identified the following key milestones for implementing the revised standards:

By October 1, 2016: States recommend the designation for all areas of the state and the associated boundaries for those areas.

By October 1, 2017 (or no later than October 1, 2018<sup>1</sup> – see discussion below): EPA issues final area designations and classifies nonattainment areas.

By October 1, 2018: States submit updates, as necessary, to their infrastructure SIPs.

2020 to 2021: For nonattainment areas classified as “Moderate” and above, states complete development of nonattainment SIPs, outlining how they will reduce pollution to meet the standards by the attainment date.

2020 to 2037: Nonattainment areas are required to attain the primary (health) standard, with deadlines depending on the severity of each area’s ozone problem.

On November 17, 2016 (81 FR 81276), EPA proposed the method for classifying nonattainment areas and a SIP Requirements Rule for the 2015 ozone standards. The proposal addresses the attainment dates for each nonattainment area classification and a range of nonattainment area state implementation requirements (e.g., reasonable further progress, reasonably available control technology, nonattainment new source review for major sources, and attainment demonstrations). Other issues addressed in the proposal are the revocation of the 2008 ozone standards and the extent to which requirements based on the 2008 ozone standards would continue to apply after those standards are revoked.

Given the delays noted above with implementing the 2008 standards, some states and industry groups have expressed concerns with the complexities of conducting planning and developing emissions controls to meet both the 2008 and 2015 ozone standards at the same time. Currently, 24 areas in 14 states have recent air quality that does not meet the 2008 ozone standards.<sup>2</sup> Most of these states have had nonattainment areas for ozone since the ozone standards were established in 1979 and have been working diligently to achieve cleaner air for many years, resulting in significant improvements in ozone air quality.

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<sup>1</sup> Pursuant to Section 107(d)(1)(B)(i) of the Act, the Administrator may extend the deadline by 1 year if he has insufficient information to promulgate the designations.

<sup>2</sup> Based on air quality data from 2014-2016. Includes 22 areas already designated nonattainment and 2 newly violating attainment areas.



In addition, following the recent change in administrations, the Agency is currently evaluating a host of complex issues regarding the 2015 ozone NAAQS and its implementation, such as understanding the role of background ozone levels, appropriately accounting for international transport, and the processes associated with obtaining preconstruction air pollution permits for stationary sources. The Administrator also is evaluating the information that is available to determine area designations. In addition, pursuant to language in the *Consolidated Appropriations Act, 2017*, the Administrator established an Ozone Cooperative Compliance Task Force to explore additional flexibilities for states to comply with the ozone standard.

The sections below discuss past and present efforts by EPA to establish ozone cooperative agreements with states, statutory provisions of the Clean Air Act, and other possible mechanisms – all of which are designed to provide regulatory relief for states.

### **Cooperative Agreements**

EPA has a long history of working with states to facilitate flexible NAAQS implementation, including through the use of cooperative agreements. For example, for purposes of implementing the 1997 ozone NAAQS, EPA used cooperative agreements with States to improve ozone air quality more rapidly than would have been otherwise required by the Clean Air Act. In 2002 (after the standard was promulgated, but before areas were designated), some state, local, and tribal air pollution control agencies expressed a need for added flexibility in implementing the 8-hour ozone NAAQS. One concept was to provide incentives for taking early action to reduce ground-level ozone in exchange for avoiding the stigma of a Clean Air Act nonattainment designation and accompanying requirements. This incentive concept became the basis for the development of the Early Action Compact (EAC) Program.

Certain environmental groups supported the concept of early action to improve air quality sooner, but had serious concerns about the approach, including, in their view, a weakening of enforcement of the Clean Air Act's nonattainment area requirements. Ultimately, EPA worked with these parties to address their concerns by incorporating elements into the EAC program to help ensure accountability and results.

In 2002, the Texas Commission on Environmental Quality submitted an EAC protocol to EPA. EPA endorsed the protocol and subsequently issued guidance for compact areas. Twenty-nine areas from 12 states submitted signed compact agreements by December 2002. Table 1 lists all of the participating areas, only one of which did not complete the program due to an air quality violation (Denver-Boulder-Greeley-Fort Collins-Loveland, Colorado). Fourteen of the areas participated as “nonattainment-deferred.” This meant that their effective date of designation as nonattainment would have been June 15, 2004; however, EPA deferred this date because of their participation in the EAC Program. The remaining fifteen areas met the 1997 ozone NAAQS and were designated attainment in 2004, but were close to violating the standard and were looking to voluntarily adopt programs to avoid becoming nonattainment in the future. The program did not provide any statutory relief for these areas.

**Table 1. Twenty-Nine Participating EAC Program Areas**

<b>Nonattainment Deferred Areas (14)</b>	<b>Attainment Areas (15)</b>
Berkeley and Jefferson Counties, West Virginia	Austin, Texas
Chattanooga, Tennessee-Georgia	Berkeley-Charleston-Dorchester, South Carolina
Columbia, South Carolina (Central Midlands Area)	Catawba, South Carolina
Denver-Boulder-Greeley-Fort Collins-Loveland, Colorado	Longview/Northeast, Texas
Fayetteville, North Carolina (Cumberland County)	Low Country, South Carolina
Frederick County, Virginia	Lower Savannah-Augusta, South Carolina-Georgia
Greensboro-Winston Salem-High Point, North Carolina (Triad Area)	Mountain Area of Western North Carolina (Asheville)
Greenville-Spartanburg-Anderson, South Carolina (Appalachian Area)	Oklahoma City, Oklahoma
Hickory-Morganton-Lenoir, North Carolina (Unifour Area)	Pee Dee, South Carolina
Johnson City-Kingsport-Bristol, Tennessee	San Juan County, NM
Nashville, Tennessee	Santee Lynches, South Carolina
Roanoke, Virginia	Shreveport/Bossier City, LA
San Antonio, Texas	Tulsa, Oklahoma
Washington County, Maryland (Hagerstown)	Upper Savannah Abbeville-Greenwood, South Carolina
	Waccamaw, South Carolina

The EAC Program concluded in the spring of 2008. At that time, EPA designated as “attainment” those EAC areas that had attained the ozone NAAQS and affirmed a nonattainment designation for the one area that had not attained the NAAQS for ozone. In addition, following the conclusion of the EAC Program, EPA’s Office of Policy Analysis and Review and EPA’s Office of Air Quality Planning and Standards undertook a study of the EAC Program to learn what worked well and what did not with this community-based program, including whether EAC Program areas attained the ozone NAAQS early (“Early Action Compact Program for Ground-Level Ozone: A Study,” EPA-456/R-09-001, June 2009). EPA’s report found that the EAC Program was generally popular with participating state and local officials. These officials indicated the EAC Program model provided the right combination of incentives, flexibility, and structure and was used to foster a collaborative environment that:

- 1) Encouraged local stakeholders to take ownership of the ozone air quality issue and to develop and adopt local measures;
- 2) Increased awareness of ozone air quality issues with key stakeholders and, to a degree, with the public; and



3) Helped establish working relationships between state environmental agencies and local government that may prove beneficial for future implementation of air quality standards.

For the vast majority of the 20 areas examined in EPA's study, the EAC Program appeared to successfully encourage the development and adoption of quantifiable, local emission reduction control measures by the December 2005 deadline. Ninety-six percent of the total 388 measures implemented for the 20 areas were implemented by the EAC Program's December 2005 deadline, according to EAC progress reports and SIPs. Estimated emission reductions from local measures collectively constituted an estimated nine percent or more of quantified nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) emissions reductions in seven of 18 EAC Program areas included in the study for which complete emissions reductions data were available (the remaining reductions were achieved from national and state measures). The local measures were "directionally correct" and should assist the areas in maintaining the ozone NAAQS. According to many state and local officials, the program also resulted in quantifiable emission co-reductions of other pollutants, including particulate matter and/or air toxics. All but one of the 20 EAC areas did attain the ozone NAAQS by December 31, 2007; in fact, 15 of the 20 EAC areas attained the 8-hour ozone NAAQS by December 31, 2004 – prior to the required 2005 implementation date for the EAC control measures.

EPA has determined that the EAC Program was outside of EPA's statutory authority because the Act does not provide authority for EPA to defer the effectiveness of nonattainment area designations indefinitely. The statutory designation provision is clear that EPA has 2 years from promulgation of a revised NAAQS to designate areas with a possible 1-year extension if the Agency has insufficient information to promulgate the designations within 2 years. For 14 areas participating in the EAC Program, EPA deferred the effectiveness of the nonattainment designation for a total of 4 years; thus, these areas were not designated for more than 4 years after all other areas were designated for the 1997 NAAQS. The environmental groups who worked with EPA and communities to structure the EAC Program challenged EPA's actions deferring the effective date of designation for these areas, but agreed to hold their challenges in abeyance for so long as the states met their milestone obligations under the agreements. Any consideration of another EAC-like program in the future will need to account for the likelihood of such challenges again. Consequently, prior to undertaking such a program, EPA would need to engage with interested stakeholders, including its state partners and environmental groups, to determine the appropriate scope for the program.

In an effort to build on the positive results from the EAC Program, but recognizing that the CAA does not provide authority to indefinitely defer the effectiveness of designations for areas, in 2012, EPA initiated the Advance Program as a collaborative effort with states, tribes, and local governments to encourage emission reductions in attainment areas, to help them continue to meet the NAAQS for ozone and particle pollution. Through the Advance Program, states, tribes, and local governments work with EPA to take near-term, voluntary steps to improve local air quality and ensure continued health protection over the long-term. These efforts have and will continue to reduce air pollution and could provide an improved buffer against future air quality violations.

Ozone Advance began in April 2012 and focuses on maintaining the ozone standards, while PM Advance began in January 2013 and emphasizes maintenance of the particulate matter standards. Areas that join both Ozone and PM Advance are interested in pursuing multi-pollutant reductions. The Advance Program is flexible in the sense that participants determine their own



goals and the measures they want to implement in order to reach them. Although there are no guarantees that participation will prevent a future nonattainment designation from occurring, the actions taken as part of Advance could better position an area to handle nonattainment requirements if they ever do apply. Currently, 43 areas in the U.S. are participating in the Advance program, including 32 areas addressing ozone pollution. EPA will continue to assist them as they identify, evaluate, select, implement, and update measures and programs tailored to their needs. <https://www.epa.gov/advance>

## **Regulatory Relief**

A number of mechanisms in the Clean Air Act (CAA) and EPA regulations are designed to provide relief to states and sources under specified conditions. Some mechanisms would provide relief from a nonattainment designation; others would only provide relief from some of the CAA-prescribed nonattainment area requirements. To employ any of the available mechanisms, states and EPA need to work cooperatively to develop supporting documentation and to take whatever public process steps are legally necessary to use the relief provisions.

- (1) *Exceptional Events Exclusions (CAA Section 319)*: Air monitoring data that exceeds the ozone standards and would lead to a nonattainment designation may be excluded from designation determinations, if the data are determined to be affected by exceptional events. From an air quality perspective, an exceptional event is one that affects air quality, is not reasonably controllable or preventable, and is either a natural event or one caused by human activity that is unlikely to recur at a particular location.<sup>3</sup> A state may request that EPA exclude data showing one or more exceedances of the NAAQS from the calculations for determining compliance with the standards, if it can demonstrate that an exceptional event caused the exceedance. EPA finalized revisions to the original Exceptional Events Rule in October 2016 to streamline review and approval of ozone-producing events, such as stratospheric intrusions and wildfires. In some locations, the exclusion of data influenced by exceptional events may affect whether a location is determined to exceed the 70 ppb ozone standards. In other words, an area that would otherwise violate the standard is instead meeting it and thus would be designated “unclassifiable/attainment.” Also, in some locations, the exclusion of data influenced by exceptional events may not result in a design value that meets the standard, but may lower the design value such that the area qualifies for a lower nonattainment classification and thus the area would be subject to fewer mandatory Clean Air Act requirements.
- (2) *Small nonattainment area boundaries for sites minimally impacted by nearby sources (CAA Section 107(d))*: The Clean Air Act requires a nonattainment area to be comprised of the area not meeting the NAAQS and the nearby area that is contributing to the area not meeting the NAAQS. At monitor locations exceeding the 70 ppb standards, where there are no or few nearby permanent sources of ozone precursors, or where nearby sources are shown to be unlikely contributors on days with high ozone, states can recommend, and EPA may be able to finalize, a nonattainment area boundary that includes a limited area associated with a reasonable jurisdictional boundary. Additionally, land above a certain elevation for high

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<sup>3</sup> “Treatment of Data Influenced by Exceptional Events; Final Rule,” 81 Federal Register 68216, October 3, 2016.



elevation sites with no local sources, or other appropriate indicators may be well-suited for a small nonattainment area boundary (see, for example, Tehama County, CA where only those portions of the area above 1,800 feet in elevation were designated nonattainment for the 2008 ozone standards). A relatively small nonattainment boundary limits the area subject to nonattainment New Source Review (NSR) permitting and federal conformity. In some instances, these relatively small nonattainment areas also may help support a state's request that an area be identified as a Rural Transport Area, a determination that provides relief from certain otherwise applicable requirements.

- (3) *Rural transport areas (RTAs) (CAA Section 182(h))*: The RTA provisions of the Clean Air Act allow EPA's Administrator to determine that a nonattainment area can be treated as if it were a Marginal nonattainment area (i.e., a classification with minimal mandatory requirements) regardless of the area's design value and regardless of whether the area attains the standard by any given deadline. To qualify, a nonattainment area must not be adjacent to, or include any part of, a Metropolitan Statistical Area (MSA) and must not have sources of NO<sub>x</sub> and VOC that significantly contribute to the violation in the area or to violations in other areas. If a state demonstrates to the satisfaction of EPA's Administrator that these conditions are met for an area, the state would not be required to develop an attainment plan and demonstration for the area. Four ozone nonattainment areas have previously been approved for RTA status: Door County Area, WI; Edmonson County Area, KY; Essex County Area (Whiteface Mountain), NY; and Smyth County Area (White Top Mountain), VA. These RTAs were approved for the 1-hour ozone standard. EPA works cooperatively with states to develop any request for an RTA determination, and also provides assistance to states with areas obtaining approved RTA status, in meeting the applicable CAA-required implementation program provisions for Marginal nonattainment areas (e.g., emissions statement rules, periodic emissions inventories, nonattainment NSR program).
- (4) *International transport provisions (CAA Section 179B)*: In nonattainment areas appreciably affected by international transport, the Clean Air Act provides that under certain circumstances the state's attainment plan may be approved even if it does not demonstrate attainment, and the area will not be reclassified to a higher classification and subject to the additional planning and control requirements that accompany that classification. To receive such an approval, the state would need to show that its plan would achieve attainment by the relevant attainment date "but for" the influence of international emissions. When applicable, this Clean Air Act provision relieves states from imposing control measures on emissions sources in the state's jurisdiction beyond those required under the Act for the area's current classification.
- (5) *Permit Grandfathering*: As part of the final rule for the 2015 ozone standards, EPA issued a grandfathering provision for certain preconstruction permitting requirements to ensure that compliance with the revised ozone standards will not delay final processing of certain pending permit applications. This provision, similar to the provision finalized in EPA's 2012 particulate pollution standards, applied to certain eligible applications for PSD permits that had achieved particular milestones by the time of signature or by the effective date of the rule, depending on the milestone. The grandfathering provision applied to PSD permit applications if either:

- The permitting agency had formally determined the application to be complete as of October 1, 2015; or
- The public notice for a draft permit or preliminary determination had been published prior to the date the 2015 ozone standards became effective (i.e., 60 days after publication in the Federal Register).

The final grandfathering provision became part of EPA's PSD permit program, but states and local agencies with EPA-approved PSD permit programs also were able to use the provision if they chose to do so. The grandfathering provision applied only to the requirement to demonstrate that a proposed project would not cause or contribute to a violation of the 2015 ozone standards. Proposed projects are still subject to all other PSD requirements, including Best Available Control Technology (BACT), and are required to demonstrate compliance with the applicable previous ozone standards.

(6) *Revoking Prior Standards:* To minimize potentially overlapping requirements and facilitate a more flexible transition to implementing new standards, EPA has historically revoked superseded standards. For example, in its implementation rule for the 2008 ozone standards, EPA revoked the 1997 ozone standards 1 year after the effective date of designations for that standard (and established anti-backsliding requirements that apply when the 1997 ozone standards are revoked).<sup>4</sup>

In its proposed implementation rule for the 2015 ozone standards, EPA proposed two options for revoking the 2008 ozone NAAQS:

- Option 1 - Consistent with EPA's approach for revoking the 1997 ozone standards, this option would revoke the 2008 NAAQS in all areas effective 1 year after the effective date of designations for the 2015 ozone NAAQS. This option would establish a set of protective anti-backsliding requirements for all nonattainment areas that have not yet attained the 2008 NAAQS at the time of its revocation.
- Option 2 - This option would revoke the 2008 ozone NAAQS in each area designated attainment for the 2015 NAAQS 1 year after the effective date of the 2015 ozone NAAQS designation for that area. Under this option, the 2008 ozone NAAQS would continue to apply in any area designated nonattainment for the 2008 standards until that area is redesignated to attainment for the 2008 standard. This option would follow the approach established most recently for the particle pollution standards.

EPA also intends to further examine and, where appropriate, make available additional regulatory relief in its final implementation rule for the 2015 ozone NAAQS. The mechanisms that EPA intends to evaluate include streamlining preconstruction permitting review for new and modified stationary sources, whether there are flexibilities for areas significantly impacted by background ozone in addition to the statutory international transport relief provided for areas impacted by international sources, and establishing a nonattainment area classification scheme that provides states with as much flexibility as possible to craft local solutions before the onset of more prescriptive mandatory requirements. Other mechanisms for providing regulatory relief that have been suggested include revising monitoring or data handling procedures to exclude

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<sup>4</sup> This provision is currently in litigation in the DC Circuit, and the outcome of that litigation could affect moving forward with this in the future.



exceedances attributable to background ozone, deferring designations in locations impacted by background ozone, and designating areas influenced by background ozone as unclassifiable. EPA is still exploring whether these additional mechanisms may provide a viable path forward for providing regulatory relief. Finally, EPA intends to continue investing in the science (e.g., data collection and air quality models) to better evaluate and quantify background ozone contributors, including individual sectors/events and locations, and to develop better tools to support development and review of ozone-related exceptional event demonstrations.

## **Conclusions**

Protecting air quality is a federal-state partnership and EPA and states together have made significant progress in reducing ozone pollution. Nationwide, ozone levels have dropped by a third since 1980 at monitor sites that track ozone trends. Some states, however, are expressing frustration with the challenges of simultaneously implementing multiple NAAQS for ozone – in particular, the 2008 standards and the 2015 standards. While the initial planning deadlines for the 2008 standards have largely passed and state planning for the 2015 standards is just getting started, some states and industry groups have expressed concerns with the timing associated with conducting planning and developing emissions controls to meet a series of increasingly stringent standards. Past and present efforts to establish ozone cooperative agreements with states, as well as the statutory provisions of the Clean Air Act and other mechanisms which the Agency and states are currently implementing are examples of administrative options states may look to when considering entering into cooperative agreements with EPA that potentially provide regulatory relief while meaningfully cleaning up the air. EPA's prior voluntary EAC Program, in particular, was successful in providing flexibility for areas in achieving the 1997 ozone standards sooner than required. Currently, EPA is working with a number of states and communities as part of its voluntary Advance program to help them reduce air pollution, although this program does not directly provide any statutory relief. Some states also are relying on provisions of the Clean Air Act to provide relief from a nonattainment designation or relief from some of the CAA-prescribed nonattainment area requirements. EPA is examining and may include additional relief in its final implementation rule for the 2015 ozone NAAQS and will further consider other mechanisms for providing regulatory relief suggested by stakeholders. Additional flexibilities will continue to be assessed and recommended by the Agency's on-going Ozone Cooperative Compliance Task Force.