1-Year Deadline Extension for Area Designations for 2015 Ozone NAAQS

April 6, 2017

SUMMARY

The Clean Air Act provides in section 107(d)(1)(B)(i) that the Administrator has two years from promulgation of revised national ambient air quality standards (NAAQS) to promulgate designations, but that the Administrator may extend that period by up to 1 additional year "…in the event the Administrator has insufficient information to promulgate the designations." The Act does not define "insufficient information." Past Administrators have relied on this provision several times in designations efforts over the past 7 years to allow more time to gather information or allow other related events to be completed. (Note, this action consists of a very short *Federal Register* notice.) The 1-year extension provision was invoked for the entire country for designations for the 2008 ozone and 2010 1-hour SO_2 NAAQS, and on a more limited scale for the designations for the 2008 lead and 2012 $PM_{2.5}$ NAAQS. No party has filed a legal challenge to a past EPA action invoking the 1-year extension provision.[1] The Clean Air Act also provides a designation of "unclassifiable" that can be used for individual areas where, based on available information, the Administrator is not able to determine whether an area meets or does not meet the NAAQS.

POTENTIAL BASIS FOR ANNOUNCING 1-YEAR DEADLINE EXTENSION

Statutory and Historical Guidelines: The statute does not define what "insufficient information" means. The EPA has used different reasons to justify that there is "insufficient information" for invoking the 1-year deadline extension for different NAAQS (see Recent History section). In several cases, EPA has relied on the unavailability of air quality monitoring data used in determining whether an area "meets or does not meet" the NAAQS.[2] In one case, EPA relied on the need to first promulgate rules directing how the NAAQS would be implemented.

[redacted]

[1] EPA's failure to issue designations by the deadline established after invoking the 1-year extension period for the 2008 ozone NAAQS and the 2010 SO_2 NAAQS resulted in litigation filed by public health and environmental protection groups claiming EPA had failed to meet a statutory deadline.

[2] Most NAAQS, including ozone, require 3 consecutive years of monitoring data for determining whether an area is attaining the standard. These 3-year average calculations are called "design values."

[3] The 10 states with ozone seasons extending to December are Arizona, California, Colorado, Florida, Hawaii, Louisiana, Nevada, New Mexico, Texas and Utah. The 2 states with ozone seasons extending to November are Arkansas and Oklahoma. An additional 26 states have ozone seasons that extend to October.

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RECENT HISTORY OF 1-YEAR DESIGNATIONS EXTENSIONS

- **2012 $PM_{2.5}$ NAAQS:** The December 2014 designations deadline was extended until December 2015 for several areas of the country pending a review of state monitoring network data quality procedures. *See* 80 FR 2206 (January 15, 2015) and 80 FR 18535 (April 7, 2015). Specifically, $PM_{2.5}$ monitoring data for 2011 and 2012 from some areas in Georgia, and throughout the entire states of Tennessee and Florida were incomplete due to quality assurance failures. Complete data became available in the remaining areas of Georgia and most of Florida by the end of calendar year 2015, and in August 2016 the EPA issued designations for these areas. *See* 81 FR 61136 (September 6, 2016 – areas in GA and FL). Although past the statutory extension deadline, at the end of calendar year 2016 complete data became available for the state of Tennessee, and the EPA is currently preparing to issue the designations for this state in 2017. Once the Tennessee designations are finalized, there will remain only 5 counties in Florida that are undesignated for the 2012 $PM_{2.5}$ NAAQS.
- **2010 SO_2 NAAQS:** The June 2012 designations deadline was extended until June 2013 for the entire country by EPA due to "significant uncertainty," citing the need to resolve the approach for SO_2 implementation, including a comprehensive SO_2 air quality assessment strategy. *See* 78 FR 47191 (August 5, 2013). In August 2013, the Administrator issued nonattainment designations for 29 areas where the existing SO_2 monitoring network indicated violations of the revised SO_2 NAAQS, and further deferred designations for the remainder of the country pending the EPA's effort to finalize a comprehensive SO_2 air quality assessment strategy. Under the terms of a settlement to a deadline suit brought by environmental groups, the Administrator issued designations for 65 additional areas in 2016. *See* 81 FR 45039 (July 12, 2016) and 81 FR 89870 (December 13, 2016). Under the terms of the settlement, the Administrator is required to issue designations for most of the remainder of the U.S. by the end of 2017, and the remaining areas by the end of 2020.
- **2008 Lead NAAQS:** The October 2010, designations deadline was extended until October 2011, for most of the country to enable states to finish establishing a new network of lead monitors required for sources of lead emissions greater than 1 ton per year. *See* 75 FR 71033 (November 22, 2010). In October 2010, nonattainment designations were issued for 16 areas where the existing lead monitoring network indicated violations of the 2008 lead NAAQS. Designations were completed for all remaining areas of the U.S. in October 2011.[4] *See* 76 FR 72097 (November 22, 2011).
- **2008 Ozone NAAQS:** The March 2010 designations deadline was extended until March 2011 for the entire country because EPA announced in September 2009 an intention to reconsider the 0.075 ppm standard that had been established in 2008. *See* 75 FR 2936 (January 19, 2010). In that action, EPA stated that it had insufficient information to promulgate the designations because of the significant uncertainty that the reconsideration proposal created regarding the continued applicability of the 2008 ozone NAAQS. In September 2011, EPA announced that the reconsideration would not be completed, and implementation of the 2008 NAAQS would move forward. A deadline suit from public health and environmental groups followed, and litigants agreed to settle on a May 31, 2012, deadline. The Administrator issued ozone designations for the entire country in the spring of 2012. *See* 77 FR 30087 (May 21, 2012) and 77 FR 34221 (June 11, 2012). At the same time EPA issued the designations, EPA issued the rule establishing the method of classification for areas for the 2008 ozone NAAQS. *See* 77 FR 30160 (May 21, 2012).

[4] The form of the lead standard requires as few as 3 months of monitoring data in order to determine an area is out of compliance. States had established new monitoring networks starting in 2010 for sources of lead required by EPA regulations to be monitored. This allowed additional monitoring data to be gathered for calendar year 2010 and the beginning of 2011 to inform designations for the remainder of the country.