

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF TEXAS, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.

Respondents.

Case No. 15-1494
(Consolidated with
Nos. 15-1385, 15-1392,
15-1490, and 15-1491)

PETITIONERS' NON-BINDING STATEMENT OF ISSUES

Petitioners, the State of Texas and the Texas Commission on Environmental Quality, challenge the legality of the final agency rule entitled “National Ambient Air Quality Standards for Ozone,” published at 80 Fed. Reg. 65292 (Oct. 26, 2015), and respectfully submit this preliminary and non-binding statement of issues:

1. Whether EPA’s revision of the national ambient air quality standard for ozone (“ozone NAAQS”) was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the Clean Air Act (“CAA”) or any other laws;
2. Whether EPA’s revision of the ozone NAAQS was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because EPA failed to consider the effects that an unnecessarily stringent standard would have on Texas’s social, economic, and sovereign interests;

3. Whether EPA's revision of the ozone NAAQS was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the CAA because EPA failed to properly evaluate the scientific evidence and disregarded data and analyses that conflicted with its decision to lower the ozone NAAQS from 75 parts per billion ("ppb") to 70 ppb;

4. Whether EPA's revision of the ozone NAAQS was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the CAA because EPA disregarded evidence showing that lowering the ozone NAAQS was unnecessary to protect human health;

5. Whether EPA's revision of the ozone NAAQS was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the CAA because EPA ignored analyses from the Texas Commission on Environmental Quality and other entities that show no difference in ozone-inhaled dosage between 70 and 75 ppb;

6. Whether EPA's revision of the ozone NAAQS was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the CAA because EPA failed to consider background levels of ozone, including those caused by mobile sources, stratospheric intrusion, bordering states, the Texas-Mexico border, as well as exceptional events and other factors over which Texas has no control;

7. Whether EPA's revision of the ozone NAAQS was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the CAA because EPA set a standard impossible for Texas to attain;

8. Whether EPA's revision of the ozone NAAQS was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the CAA because Texas is still devoting resources and working toward attaining the 2008 ozone NAAQS, making EPA's action premature and unnecessary; and

9. EPA's revision of the ozone NAAQS forms part of larger, comprehensive framework of recent rules promulgated by the EPA, some of which target the same underlying air pollutants at issue in the ozone NAAQS. EPA's other rule promulgations are the subject of meritorious challenges in this and other circuits. EPA has failed to consider the comprehensive social, economic, and health effects of these other rule changes, if implemented, and whether those rules will achieve the social, economic, and health effects intended in *this* promulgation—therefore subjecting Texas and other entities to duplicative and unnecessary expenditures.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that on February 3, 2016, I served the foregoing Petitioners' Non-Binding Statement of Issues on all registered counsel in this case, and all consolidated cases, through the Court's CM/ECF system.

/s/ Craig J. Pritzlaff
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