

Fact Sheet

Proposed Rule to Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Revision to Address Court Vacatur: Subpart 1 Area Reclassification and Provisions Under Former 1-Hour Ozone Standard

ACTION

- On January 9, 2009 the U.S. Environmental Protection Agency (EPA) proposed a response to the DC Circuit Court's vacatur of an April 2004 rule known as the Phase 1 Ozone Implementation Rule. The April 2004 rule specified the first phase of requirements state, tribal and local air pollution control agencies would follow to implement the 1997 national air quality standard for 8-hour ozone.
- On December 22, 2006, the U.S. Circuit Court of Appeals for the District of Columbia Circuit issued a decision, ruling against EPA on several of the issues raised and rejecting other challenges to the rule. (South Coast Air Quality Management Dist. v. EPA, 472 F.3d 882 (D.C.Cir. 2006)). In response to this Court action EPA must conform the implementation rule to the court's partial vacatur.
- EPA proposes to classify under subpart 2 all remaining nonattainment areas originally covered under subpart 1. Areas would be classified based on the same air quality data used in the initial 2004 designations, and would be classified either marginal or moderate.
- In addition, EPA is proposing that 1-hour ozone contingency measures would continue to apply until an area attains the 1997 8-hour ozone standard.
- The proposal would remove language relating to the vacated provisions of the rule that provided exemptions from the requirements of nonattainment new source review (NSR) and CAA section 185 penalty fees under the 1-hour standard. Implementation of those provisions will be addressed in a separate rulemaking.
- EPA also proposes to delete an obsolete provision in the 1-hour ozone standard that was applicable only prior to the time when the 0.08 ppm 8-hour standard was subject to litigation. That period of time passed after the final challenges to the 0.08 ppm 8-hour ozone standard were denied by the Courts in 2002.
- EPA will accept public comments on this proposal for 30 days following its publication in the Federal Register. EPA will hold a public hearing on this proposal if one is requested.

BACKGROUND

- On April 30, 2004 (69 FR 23951), EPA published the Phase 1 Final Rule that addressed the following key elements related to implementation of the 8-hour ozone national ambient air quality standard (NAAQS):
 - Classifications for the 8-hour NAAQS; revocation of the 1-hour NAAQS (i.e., when the 1-hour NAAQS will no longer apply);
 - How anti-backsliding principles will ensure continued progress toward attainment of the 8-hour ozone NAAQS;
 - Attainment dates; and
 - The timing of emissions reductions needed for attainment.
- Ground-level ozone is not generally emitted directly into the air, but forms through a reaction of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in the presence of sunlight.
- Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are the major man-made sources of NO_x and VOCs.
- EPA set the 1997 ground-level ozone standard at 0.08 ppm. Even though it has been revised, this standard remains in effect. Many areas throughout the country continue to work towards attaining it.
- On March 12, 2008, EPA significantly strengthened the 1997 8-hour “primary” ozone standard, designed to protect public health, to a level of 0.075 parts per million (ppm). EPA also strengthened the secondary 8-hour ozone standard to the level of 0.075 ppm making it identical to the revised primary standard. EPA is developing rules needed for implementing that standard.
- Health effects associated with exposure to ground-level ozone include:
 - Reduced lung function, making it more difficult for people to breathe as deeply and vigorously as normal;
 - Irritated airways, causing coughing, sore or scratchy throat, pain when taking a deep breath and shortness of breath;
 - Increased frequency of asthma attacks;
 - Inflammation of and damage to the lining of the lung;
 - Increased susceptibility to respiratory infection; and
 - Aggravation of chronic lung diseases such as asthma, emphysema and bronchitis.
- In some people, these effects can lead to:
 - Increased medication use among asthmatics;
 - More frequent doctors visits;
 - School absences; and
 - Increased emergency room visits and hospital admissions.

- Ozone may continue to cause lung damage even when the symptoms have disappeared.
- Breathing ozone may contribute to premature death, especially in people with heart and lung disease.
- Ground-level ozone can have harmful effects on various plants and ecosystems. When sufficient ozone enters the leaves of a plant, it can:
 - Interfere with the ability of sensitive plants to produce and store food, making them more susceptible to certain diseases, insects, other pollutants, competition, and harsh weather
 - Visibly damage the leaves of trees and other plants, harming the appearance of urban vegetation, national parks, and recreation areas; and
 - Reduce forest growth and crop yields.

HOW TO COMMENT

- EPA will accept comment on this proposal for 30 days after publication in the Federal Register. Comments may be submitted by one of the following methods:
 - www.regulations.gov: follow the on-line instructions for submitting comments.
 - E-mail: Comments may be sent by electronic mail (e-mail) to a-and-r-Docket@epa.gov. Attention Docket ID No. EPA-HQ-OAR-2007-0956.
 - Fax: Fax your comments to: 202-566-1741, Attention Docket ID. No. EPA-HQ-OAR-2007-0956.
 - Mail: Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR-2007-0956.
 - Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW, Room 3334, Washington, D.C. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

FOR ADDITIONAL INFORMATION

- Background information on this proposal is available either electronically at <https://www.regulations.gov>, EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
 - The Public Reading Room is located in the EPA Headquarters, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.

- Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
 - Supporting information for this action can be accessed under Docket ID No. EPA-HQ-OAR-2007-0956.
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- For general information about this proposal, please contact Mr. John Silvasi of EPA's Office of Air Quality Planning and Standards at (919) 541-5666, or silvasi.john@epa.gov.