

EPA Signs Final Rule to Revise National Ambient Air Quality Standards for Particulate Matter

September 27, 2006

On September 21, the U.S. Environmental Protection Agency (EPA) signed a final rule to revise the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM). The rule and standards will be effective 60 days after publication in the Federal Register. EPA proposed the revisions to the PM NAAQS on December 20, 2005. Section 109(d)(1) of the Clean Air Act requires that the Administrator of the EPA complete a thorough review of the NAAQS at 5-year intervals and, based on this review, make such revisions to the NAAQS as may be appropriate to provide requisite protection of public health and welfare. According to EPA, the revisions to the PM NAAQS are based on its review of scientific studies and evidence of health effects and risks related to exposures to fine particles (PM_{2.5}) and thoracic coarse particles (PM₁₀). In this rulemaking, EPA revised the primary PM_{2.5} standards, primary PM₁₀ standards, and secondary PM standards. A summary of EPA's revisions to the PM standards is provided in Table A at the end of this alert.

Revisions to Primary PM_{2.5} Standards

EPA currently maintains primary PM_{2.5} standards based on annual and 24-hour averaging times to protect public health. In the final rulemaking, EPA retained these averaging times, and thus, will continue to maintain both a 24-hour PM_{2.5} standard and an annual PM_{2.5} standard. The final rule lowered the 24-hour primary PM_{2.5} standard from 65 micrograms per cubic meter (µg/m³) to 35 µg/m³. With regard to the annual PM_{2.5} standard, EPA did not follow the Clean Air Science Advisory Committee recommendations and instead retained the existing annual standard of 15 µg/m³. Recent estimates indicate that as many as 441 counties might be designated nonattainment under this more stringent 24-hour PM_{2.5} standard. This is a substantial increase from the 116 counties that are currently designated nonattainment under the existing PM_{2.5} standard, and from the 39 counties that EPA projects to be in nonattainment by 2010 after partial implementation of the Clean Air Interstate Rule (CAIR) and other federal air regulatory requirements.

Revisions to Primary PM₁₀ Standards

EPA did not revise the existing 24-hour PM₁₀ standard, but instead retained the current level of 150 µg/m³ in the final rule. In the proposed rule, EPA had considered replacing the existing PM₁₀ standard with a PM_{10-2.5} standard, establishing a new indicator for thoracic coarse particles and focusing on coarse particles more commonly found in urban areas. However, based on further consideration of the scientific evidence, the agency determined that it was more appropriate to retain the existing PM₁₀ indicator. EPA also decided not to pursue the proposed approach of regulating only coarse PM from urban sources under the 24-hour standard. Nevertheless, the agency encourages state and local control agencies to focus on regulation of coarse PM associated with urban and industrial areas.

Significantly, the final rule revokes the annual PM₁₀ standard. EPA found that the scientific evidence did not support an annual standard. The agency determined that there is little data linking long-term exposure to PM₁₀ to significant health effects. EPA is therefore revoking and not replacing the existing annual PM₁₀ standard.

Revisions to Secondary PM Standards

In this final rulemaking, EPA revised both the 24-hour and annual secondary PM standards, which were established to protect public welfare. Under the final rule, the secondary PM_{2.5} standards are identical to the primary PM_{2.5} standards. The secondary 24-hour PM₁₀ standard is set at 150 µg/m³,

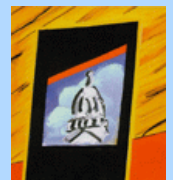
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identical to the primary 24-hour PM₁₀ standard, and EPA has revoked the secondary annual PM₁₀ standard.

Potential Regulatory Effects of New Standards

EPA and states are still in the early stages of developing control requirements for implementing the existing PM_{2.5} NAAQS. Most importantly, states were required earlier this year to have in place their interstate transport control requirements under CAIR and are required to submit by April 2008 their state implementation plans (SIPs) for attaining the existing PM_{2.5} standard. EPA's decision to revise the PM_{2.5} standard at this point in time may create significant regulatory uncertainty for states and industry. States, for example, will have to revise and expand their SIP control strategies to ensure attainment of the tighter 24-hour PM_{2.5} standard. To that end, EPA initiated in February 2006 an Advanced Notice of Proposed Rulemaking to harmonize, to the maximum extent possible, the implementation schedule for transitioning from the existing to the revised PM_{2.5} standard. The tightening of the PM_{2.5} standard also potentially complicates the implementation process for the regional transport requirements that currently apply to electric generating units under CAIR. One key factor will be whether a beyond-CAIR program is necessary to address the regional component of the nonattainment problem that may occur under a revised PM_{2.5} standard. The need for requiring further regional controls is contingent in part on whether local SIP controls are sufficient to attain the revised standard.

TABLE A

EPA's Revisions to the PM NAAQS

	Current Standard	Revised Standard
24-hour PM_{2.5}	65 µg/m ³	35 µg/m ³
Annual PM_{2.5}	15 µg/m ³	15 µg/m ³
24-hour PM₁₀	150 µg/m ³	150 µg/m ³
Annual PM₁₀	50 µg/m ³	None

For Additional Information

If you would like more information on these proposed standards or on other clean air-related issues, please contact Dick Penna, Stephen Fotis, Britt Fleming, or any other member of the firm's Environmental Practice at (202) 298-1800, or visit our website at www.vnf.com.

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