

# EPA Proposes to Lower the 8-Hour Ozone Standard

June 21, 2007

On June 21, the Environmental Protection Agency (EPA) announced its proposal to revise the 8-hour ozone National Ambient Air Quality Standard (NAAQS) to within the range of 0.070 to 0.075 parts per million (ppm). Under the Clean Air Act (CAA), EPA is required to establish a primary NAAQS for a pollutant at a level that is requisite to protect public health with an adequate margin of safety. The agency cannot take cost or implementation issues into consideration when issuing the NAAQS. The current ozone standard is 0.08 ppm, but areas may have ozone concentrations as high as 0.084 ppm and still be considered in attainment with the standard due to the way in which the measurements are rounded. The agency also will take comment on levels between 0.060 and 0.084 ppm, the effective level of the current standard.

The proposed revisions to the 8-hour ozone NAAQS would establish a standard that is less stringent than the level recommended by EPA's Clean Air Scientific Advisory Committee (CASAC), an independent panel that advises EPA on technical and scientific issues related to air quality standards. In October 2006, CASAC unanimously recommended that EPA set the 8-hour ozone standard at a level between 0.060 and 0.070 ppm and emphasized that the standard should not be higher than 0.070 ppm in order to protect public health.

EPA estimates, based on 2003-2005 data, that 398 counties would be in nonattainment if the 8-hour ozone NAAQS is revised to 0.075 ppm. Based on the same data, the agency believes that 533 counties would be in violation of a standard set at 0.070 ppm. Currently, 104 areas are classified as in nonattainment with the existing 0.08 ppm 8-hour ozone standard. This means that under any stricter standard, states will have to significantly increase their efforts to achieve additional emission reductions.

## Form of the Standard

In the proposed rule, EPA noted that monitoring technology currently in use allows the measurement of ozone concentrations to three decimal places. The agency believes that it is appropriate to specify the standard with this degree of precision and requested comment on this decision. Otherwise, EPA proposed to leave the form of the 8-hour ozone standard unchanged, which is based on the three-year average of the annual fourth-highest daily maximum 8-hour concentration. EPA has asked, however, for comments on whether to use the third- or fifth-highest daily maximum 8-hour ozone concentration. EPA's decisions on these matters are likely to affect the stringency of the new ozone standard.

## Secondary Standard

The CAA also requires EPA to set a secondary 8-hour ozone NAAQS at a level that will protect the public welfare from adverse effects. It has been EPA's practice to set this secondary standard at the same level as the primary standard. In the proposed rule, EPA offered two alternative approaches to setting the secondary 8-hour ozone standard. The first option would establish a secondary standard at the same level as the primary standard, consistent with past agency practice. Under the second option, EPA would establish a cumulative, seasonal standard. This standard would be based on 12-hour daily ozone measurements, as well as the measurements recorded over the entire three-month summer ozone season. Higher ozone concentrations would be given greater weight when cumulating the measurements. The agency proposed to establish this standard within the range of 7 to 21 ppm-hours. EPA also has requested comment on whether the secondary standard should be calculated annually or over a three-year period.

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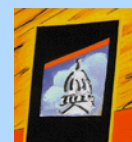
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### **Implications and Next Steps**

In light of the significant expected increase in the number of nonattainment areas, compliance with more stringent 8-hour ozone standards could require emission reductions from a variety of industrial sources. The regulatory focus will be on controlling nitrogen oxide (NO<sub>x</sub>) and volatile organic compound (VOC) emissions, but other ozone precursors could also be targeted. Some of the reductions may be achieved through recently promulgated EPA programs, including the Clean Air Interstate Rule (CAIR), Clean Air Mercury Rule (CAMR), the Clean Air Visibility Rule (CAVR), and various mobile source emission control programs that are currently being implemented, as well as other programs that are under development by EPA. EPA shortly will be providing a preliminary assessment of emissions reduction levels that are likely to be necessary from particular source categories in order to attain a revised ozone standard. This assessment will be part of a Regulatory Impact Analysis that the agency will release in the next few weeks.

EPA will accept comments on the proposal for 90 days after the proposed rule is published in the *Federal Register*. The Agency is required, under the terms of a consent decree, to issue a final rule by March 12, 2008. The agency anticipates that it will ask for state recommendations regarding attainment designations by June 2009, which will be based on 2006-2008 monitoring data. EPA also intends to issue final 8-hour ozone designations under the revised standards by June 2010, with state implementation plans (SIPs) due approximately three years later.

### **For Additional Information**

For additional information on this ruling or other air-related legislation or issues, please contact Stephen Fotis, Britt Fleming, or Richard Penna at (202) 298-1800, or any member of the firm at [www.vnf.com](http://www.vnf.com).

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