

CLIENT ALERT

EPA Proposes New Standards for Ozone, Including Both Primary and Secondary Standards

Nov.26.2014

On November 26, EPA Administrator Gina McCarthy signed a proposed rule to revise national ambient air quality standards (NAAQS) for ozone. The current ozone standard, finalized in 2008, is 75 parts per billion (ppb) and the standard applies to both health-based (primary) NAAQS and welfare-based (secondary) NAAQS. EPA is proposing to revise the primary standard to 65 to 70 ppb and to revise the secondary standard, either by setting the level consistent with the primary standard, or by establishing a separate secondary standard based on a different metric than the primary standard.

EPA is allowing 90 days from the date of Federal Register publication for the submission of public comments. Three public hearings will be held on the proposed rule in January 2015. EPA is under a consent order to make a final determination on whether to revise the current ozone standard by December 1, 2015.

With regard to the primary standard, EPA is soliciting comment on setting the standard as low as 60 ppm. This level represents the lower point in the range of standards recommended by the Clean Air Scientific Advisory Committee. EPA, however, states that a level of 60 ppb "would inappropriately place very little weight on the uncertainties in health effects evidence and exposure/risk information." In addition, the proposed rule notes that a revised standard of 70 ppb "would also be expected to protect the large majority of children in urban study areas (i.e., about 95 percent to more than 99 percent of children in individual urban study areas)."

At the same time, EPA is *not* soliciting comment on levels of the primary ozone NAAQS *above* 70 ppb or on retaining the current level of 75 ppb. In the proposed rule, the Administrator reached "the initial conclusion that the results of controlled human exposure studies strongly support setting the level of a revised [ozone] standard no higher than 70 ppb." Taken together, EPA's statements of its review of the available science and explanation of how it arrived at the proposed range of 65 to 70 ppb tends to point to a final standard within the proposed range.

With regard to the secondary ozone standard, EPA proposes to revise the current secondary standard to a range of 65 to 70 ppb, consistent with proposed form and range of the primary standard. EPA, however, is also soliciting comment on an alternative approach that would create a new "seasonal" index value (known as W126). This standard would be based on a three year average of this value as measured during daily 12-hour periods over three consecutive months during the ozone season. EPA is additionally soliciting comment on both a lower level for the alternative form of the standard (13 ppm-hours down to 7 ppm-hours) and on retaining the current secondary standard of 75 ppb.

If EPA promulgates a distinct secondary standard that differs from the primary standard, it should be noted that the Agency will need to address several additional issues, including how Clean Air Act permitting programs will be implemented, how nonattainment areas would be classified in terms of severity of nonattainment and when compliance would be required.

Altogether, based on a final rule promulgated in October 2015, states will need to submit nonattainment area designations for any new or revised ozone NAAQS by October 2016. The proposed rule indicates that states will be able to use air quality data

generated in 2013 to 2015 for the purpose of submitting designations, but that the Agency intends to promulgate designations by October 2017 based on 2014 to 2016 air quality data. State Implementation Plans to reach attainment with the new standards would be due in 2020 to 2022 with attainment deadlines from 2020 to 2037 (for primary standards). No comparable deadlines are mentioned for secondary standards, but the CAA requires that attainment for such standards be "as expeditiously as practicable."

EPA additionally indicates that it intends to issue implementation guidance for the new standards and, where appropriate, implementation rules. EPA may also address issues of the long-range transport of ozone from state-to-state as it did with regard to the Cross-State Air Pollution Rule. EPA also proposes to grandfather certain pending Prevention of Significant Deterioration permits in *attainment* areas. Under the proposed transitional provisions, permits that are complete or permits that have been subject to a public notice or preliminary determination prior to the effective date of a new NAAQS, would only be required to make air quality demonstrations based on the previous 75 ppb ozone NAAQS.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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