

Fact Sheet - Notice of Proposed Rulemaking to Reconsider How New Source Review Applies Under the Phase 1 Rule Implementing the National Air Quality Standards for 8-Hour Ozone

ACTION

- On March 25, 2005, the Environmental Protection Agency (EPA) issued a Notice of Proposed Rulemaking to reconsider how New Source Review applies under the Phase 1 Rule Implementing the National Air Quality Standards for 8-Hour Ozone. This action is in response to a Petition for Reconsideration submitted by Earthjustice on behalf of seven environmental organizations.
- In a September 23, 2004 letter, EPA granted reconsideration of three issues raised in the Earthjustice Petition:
 1. the status of fee provisions for the 1-hour National Ambient Air Quality Standards under section 185 of the Clean Air Act
 2. the timing for determining which 1-hour National Ambient Air Quality Standards control requirements will continue to apply as “applicable requirements” and
 3. whether new source review (NSR) requirements that applied for the 1-hour standard will continue to apply once that standard is revoked.
- EPA issued a proposed rule to address the first two issues on February 3, 2005. EPA is now proposing a rule to address the NSR issue raised by Earthjustice and plans to take final action on all three issues by May 20, 2005.
- In today’s this action, the Agency proposes that:
 1. the requirements for nonattainment Major NSR under the 8-hour standard will be based on a nonattainment area’s classification for the 8-hour standard, and
 2. once EPA revokes the 1-hour standard, states may remove their 1-hour major NSR programs from their state implementation plans. These plans known as SIPs demonstrate how a state will attain and maintain air quality.
- As part of this proposal, EPA is requesting comment on specific issues including:
 1. Whether we must interpret the Clean Air Act to require states to continue major NSR requirements under the 8-hour standard based on an area’s higher classification under the 1-hour standard even after that standard is revoked; and

2. Whether EPA correctly finds that revising a SIP to remove 1-hour major NSR requirements is consistent with section 110(l) of the Clean Air Act.
- This action will not affect the issuance of Phase 2 of the final rule to implement the 8-hour ozone standard which will address, among other things, reasonably available control measures, reasonably available control technology, attainment demonstrations and modeling requirements. EPA expects to issue that final rule in March 2005.

BACKGROUND

- Ground level ozone pollution (commonly referred to as smog) is formed when volatile organic compounds (VOC) react with nitrogen oxides (NOx) in the presence of sunlight.
- In 1997, EPA revised the national ambient air quality standards for ground-level ozone, setting it at 0.08 parts per million averaged over an 8-hour time frame.
- Litigation delayed the implementation of the new 8-hour ozone standard.
- EPA's new standards were challenged by the American Trucking Association, the U.S. Chamber of Commerce and other state and business groups and the D. C. Circuit Court of Appeals upheld those challenges.
- EPA sought review of the appeals court decision in the Supreme Court and in February 2001 the Supreme Court upheld EPA's authority under the Clean Air Act to set national air quality standards that protect the American public from harmful effects of air pollution. However, the Supreme Court also determined that EPA's original strategy for implementing the 8-hour standard was unreasonable and left it to EPA to develop a more appropriate strategy. The Supreme Court also sent the case back to the D.C. Circuit Court of Appeals on several issues.
- In March 2002, the D.C. Circuit Court rejected all remaining challenges to the 8-hour ozone standard, paving the way to begin implementation of the requirements.
- In setting the revised 8-hour ozone standard, EPA considered information about ozone's chronic adverse health effects. Breathing

elevated levels of ozone causes a wide range of health problems, including:

- decreased lung function (primarily in children active outdoors);
 - increased respiratory symptoms (particularly in highly sensitive individuals);
 - increased hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma);
 - inflammation of the lungs; and
 - possible long-term damage to the lungs.
- On April 15, 2004, the Administrator signed both the Phase 1 Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards and the 8-Hour Ozone Designations. Both became effective on June 15, 2004.
 - Following publication of the Phase 1 Rule, States, industry and environmental groups all filed challenges in the Court of Appeals. We also received three administrative Petitions for Reconsideration of the rule, requesting EPA to reconsider a number of aspects of the final rule.
 - EPA continues to review the other two Petitions – one from the National Petrochemical and Refiners Association which deals with the 8-hour classification scheme and one from the American Petroleum Institute which deals with the 8-hour ozone attainment dates.

FOR MORE INFORMATION

- For more information on the New Source Review program, go to EPA's website at www.epa.gov/nsr .