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Part II

Environmental Protection Agency

**40 CFR Parts 50, 58 and 81
Ozone National Ambient Air Quality
Standards; Final Rule and Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2009-0476; FRL-9102-2]

Extension of Deadline for Promulgating Designations for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of deadline for promulgating designations.

SUMMARY: EPA is announcing that it is using its authority under the Clean Air Act (CAA) to extend by 1 year the deadline for promulgating initial area designations for the ozone national ambient air quality standards (NAAQS) that were promulgated in March 2008. The new deadline is March 12, 2011.

DATES: The deadline for EPA to promulgate designations for the 2008 ozone NAAQS is March 12, 2011.

FOR FURTHER INFORMATION CONTACT: For questions regarding this action, contact Carla Oldham, Air Quality Planning Division, Office of Air Quality Planning and Standards, Mail Code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919-541-3347; fax number: 919-541-0824; email address: oldham.carla@epa.gov.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include state, local, and tribal governments that would participate in the initial area designation process for the 2008 ozone standards.

B. Where can I get a copy of this document and other related information?

EPA has established a docket for designations for the 2008 ozone NAAQS under Docket ID No. EPA-HQ-OAR-2009-0476. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., confidential business

information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

An electronic copy of this notice is also available at <http://www.epa.gov/ozonedesignations>.

II. Background

A. Designations Requirements

On March 12, 2008, EPA promulgated revised 8-hour primary and secondary ozone NAAQS (73 FR 16436; March 27, 2008). The primary standard was lowered from 0.08 parts per million (ppm) to a level of 0.075 ppm. EPA also lowered the secondary standard by making it identical in all respects to the revised primary standard. (The previous ozone NAAQS were set in 1997 and remain effective.)

After EPA establishes or revises a NAAQS pursuant to CAA section 109, the CAA directs EPA and the states to begin taking steps to ensure that those NAAQS are met. The first step is to identify areas of the country that do not meet the new or revised NAAQS. This step is known as the initial area designations. Section 107(d)(1) of the CAA provides that, "By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 109, the Governor of each state shall * * * submit to the Administrator a list of all areas (or portions thereof) in the state" that designates those areas as nonattainment, attainment, or unclassifiable. The CAA defines an area as nonattainment if it is violating the NAAQS or if it is contributing to a violation in a nearby area. (CAA section 107(d)(1)(A)(i).)

The CAA further provides, "Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) * * * as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of

the new or revised national ambient air quality standard. Such period may be extended for up to 1 year in the event the Administrator has insufficient information to promulgate the designations." (CAA section 107(d)(1)(B).)

After the states submit their recommendations, but no later than 120 days prior to promulgating designations, EPA is required to notify a state of any intended modifications to the state's recommended designation. The state then has an opportunity to demonstrate why any proposed modification is inappropriate. Whether or not a state provides a recommendation, EPA must promulgate the designation that the Agency deems appropriate within two years of promulgation of the NAAQS (or within three years if EPA extends the deadline).

For the March 2008 ozone NAAQS, the deadline for states to submit designation recommendations to EPA for their areas was March 12, 2009. EPA has been evaluating these recommendations and conducting additional analyses to determine whether it is necessary to modify any of the state recommendations. EPA was originally intending to complete the initial designations for the 2008 ozone NAAQS on a 2-year schedule, by March 12, 2010.

B. Reconsideration of the 2008 Ozone NAAQS

On September 16, 2009, the EPA Administrator announced that EPA would take rulemaking action to reconsider the 2008 primary and secondary ozone NAAQS to ensure the standards satisfy the CAA. The EPA stated that it would sign the ozone NAAQS reconsideration proposed rule by December 21, 2009, and would sign the ozone NAAQS reconsideration final rule by August 31, 2010. In addition, EPA indicated it would work with states to accelerate the area designations process and the timeframe for submission of attainment demonstration state implementation plans for any new standards promulgated in 2010 as a result of the reconsideration. This would limit delays associated with implementing any new standards.

In a separate rulemaking action, which is being published simultaneous with this announcement, EPA is proposing to set different primary and secondary standards than those set in 2008 to provide requisite protection of public health and welfare, respectively (Ozone NAAQS Reconsideration Proposal). In that Ozone NAAQS Reconsideration Proposal, EPA is proposing that the level of the 8-hour

primary standard, which was set at 0.075 ppm in the 2008 final rule, should instead be set at a lower level to provide increased protection for children and other “at risk” populations against an array of ozone-related adverse health effects that range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity.

Additionally, in the Ozone NAAQS Reconsideration Proposal, EPA is proposing that the secondary ozone standard should be a cumulative, seasonal standard. Such a standard would provide increased protection against ozone-related adverse impacts on vegetation and forested ecosystems in comparison to the secondary standard promulgated in the 2008 NAAQS final rule, which was identical to the revised primary standard.

III. Extension of Deadline for Promulgating Designations for the 2008 NAAQS

As discussed above, in the Ozone NAAQS Reconsideration Proposal, EPA proposed to set primary and secondary ozone NAAQS that are different from and more protective than those promulgated in 2008. EPA intends to issue the final Ozone NAAQS Reconsideration Rule by August 31, 2010. If, as proposed, EPA promulgates ozone NAAQS in 2010 that differ from those promulgated in 2008, any requirements to designate areas and implement the 2008 ozone NAAQS would no longer apply. Because the ozone NAAQS reconsideration rulemaking action is a reconsideration of the 2008 ozone NAAQS, rather than a new periodic NAAQS review under CAA section 109(d)(1), a decision to promulgate different standards would result in a full replacement of the 2008

ozone NAAQS.¹ In other words, if as proposed, EPA concludes in the final Ozone NAAQS Reconsideration rulemaking that the 2008 ozone standards are not requisite to protect public health and welfare and promulgates different ozone standards, there would be no obligation to implement the 2008 ozone standards, which the final rule would have determined to be invalid. In this case, the designations process for the 2008 standards would be terminated. Pursuant to the CAA, states and EPA would then begin a new designations process for the newly promulgated ozone standards.

Because of the significant uncertainty that the Ozone NAAQS Reconsideration Proposal creates regarding the continued applicability of the 2008 NAAQS, EPA has determined that there is insufficient information at this time to promulgate designations. Therefore, in this action, EPA is announcing that it is using its authority under section

¹ EPA's action to reconsider the 2008 NAAQS is different than conducting a new “review and revise, as appropriate” action that CAA section 109(d)(1) requires EPA to take periodically. Under that statutory obligation, EPA considers the current state of knowledge, including new scientific information that has become available since promulgation of the most recent standard to consider whether the standard should be revised. Unlike a new periodic review, in this case, EPA is reconsidering the basic validity and appropriateness of the 2008 decision to promulgate the primary and secondary standards, restricting itself to consideration of the same scientific information that was before EPA when it adopted the 2008 standards. In a new periodic review, EPA evaluates the current state of knowledge, including more recent scientific information, and makes a new judgment about what standard is appropriate to protect public health (primary standard) and welfare (secondary standard) in light of the then current state of information. In that case, EPA would be required to address whether and how the implementation requirements for the replaced standard should continue to apply, *see e.g.*, CAA section 172(e).

107(d)(1)(B) of the CAA to extend by 1 year the deadline for promulgating initial area designations for the March 2008 ozone NAAQS. The new deadline is March 12, 2011. Extending the deadline for promulgating designations until March 12, 2011, will allow EPA to complete the Ozone NAAQS Reconsideration rulemaking before determining whether it is necessary to complete action to finalize designations for the 2008 ozone NAAQS or, instead, whether it is necessary to begin the designations process for different NAAQS promulgated pursuant to the reconsideration. If EPA does not timely complete its reconsideration of the 2008 ozone NAAQS, EPA will move forward to complete designations for the 2008 standards no later than March 12, 2011 pursuant to the designations recommendations that states have already submitted to EPA for the 2008 standards.

On September 16, 2009, when the EPA Administrator announced her decision to reconsider the 2008 ozone NAAQS, the Agency also stated its intention to accelerate the designations process for any 2010 ozone NAAQS resulting from the reconsideration.

EPA has proposed the designations schedule for any 2010 ozone NAAQS as part of the Ozone NAAQS Reconsideration rulemaking action.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 6, 2010.

Lisa P. Jackson,
Administrator.

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