

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 50****[FRL-7519-3]****RIN 2060-AK78****Stay of Authority Under 40 CFR 50.9(b)  
Related to Applicability of 1-Hour  
Ozone Standard****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to stay its authority to determine that the 1-hour national ambient air quality standard for ozone no longer applies in areas that meet that standard. Under an existing EPA rule, EPA can determine that the 1-hour standard no longer applies to an area upon finding that the area has met that standard. The final stay will ensure that the 1-hour standard remains in place nationwide until EPA issues a new rule governing how and when the 1-hour standard should be removed. EPA is addressing that issue as part of a proposed rule for implementing the 8-hour ozone standard (68 FR 32801, June 2, 2003), and is providing the public an opportunity to comment on the issue. The stay will remain effective until the Agency takes final action revising or reinstating its authority to remove the 1-hour ozone standard, and addresses any public comments received on certain relevant issues. This final rule addresses comments received during the comment period on the previously proposed rule issued December 27, 2002.

**DATES:** The effective date for this final rule is August 25, 2003.

**ADDRESSES:** Documents relevant to this action are available for inspection at the EPA Docket Center (Air Docket), located at 1301 Constitution Avenue, NW, Room: B108, Washington, DC 20004, telephone (202) 566-1742, fax (202) 566-1741, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this final rule should be addressed to Annie Nikbakht, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, Mail Drop C539-02, Research Triangle Park, NC 27711, telephone (919) 541-5246.

**SUPPLEMENTARY INFORMATION:** Electronic Availability—The official record for this final rule, as well as the public version,

has been established under Docket Number OAR-2002-0067. To view electronically the docket for this rule, see <http://www.epa.gov/rpas>.

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**I. Background**

On December 27, 2002, EPA issued a proposed rule (67 FR 79460) to stay its authority under the second sentence of 40 CFR 50.9(b) to determine that the 1-hour ozone standard no longer applies based on a determination that an area met that standard. The EPA proposed that the stay would be effective until such time as EPA takes final action in a subsequent rulemaking addressing whether the second sentence of 40 CFR 50.9(b) should be modified in light of the Supreme Court's decision in *Whitman v. American Trucking Ass'n, Inc.*, 531 U.S. 457 (2001), regarding implementation of the 8-hour ozone NAAQS.

**II. Summary of Today's Action**

In today's action, EPA is finalizing the stay and providing that prior to lifting such a stay, we will consider and address any comments concerning (a) which, if any, implementation activities for an 8-hour ozone standard, including designations and classifications, would need to occur before EPA would determine that the 1-hour ozone standard no longer applied to an area, and (b) the effect of revising the ozone NAAQS on existing designations for the pollutant ozone.

The EPA plans to consider the timeframe and basis for revoking the 1-hour standard in the implementation rulemaking that it will propose shortly in response to a remand from the Supreme Court. The EPA believes that it is appropriate to reconsider this issue because, at the time EPA promulgated § 50.9(b), EPA anticipated that subpart 2 would not apply for purposes of implementing the revised ozone standard. It makes sense, in light of the many issues that are now being considered regarding implementation of the 8-hour standard, including the applicability of subpart 2 for purposes of implementing that standard, for EPA to consider simultaneously the most effective means to transition from implementation of the 1-hour standard to implementation of the revised 8-hour ozone NAAQS.

**III. Summary of Comments and  
Responses**

The EPA received two comments on the proposed rule during the comment period which ended on January 27, 2003. Both commenters were concerned that the regulatory language could be construed as staying EPA's authority to determine whether an area has met the 1-hour ozone standard. The proposed language said that EPA was staying its authority "to determine that an area has attained the 1-hour standard and that the 1-hour standard no longer applies." The EPA agrees that the language in the regulatory text, as proposed, could be construed in the manner suggested by the commenters. The EPA did not intend to propose that it was staying its authority to determine whether an area has attained the 1-hour standard. In fact, the Clean Air Act (CAA) requires EPA to make such determinations within 6 months of a nonattainment area's attainment date. See CAA section 181(b)(2); section 179(c). In order to avoid confusion, EPA is modifying the regulatory text as follows:

EPA's authority under paragraph (b) of this section to determine that the 1-hour standard no longer applies to an area based on a determination that the area has attained the 1-hour standard is stayed . . .

The EPA believes this language makes clear that EPA is only staying its authority to determine the 1-hour standard no longer applies to an area, which is triggered by a determination that the 1-hour standard has been attained. Thus, while EPA may still determine that an area has attained the 1-hour NAAQS, such a determination would not provide a basis for revoking the 1-hour standard for that area.

One group of commenters was further concerned that the proposed regulatory text did not fully reflect the settlement agreement in which EPA agreed to propose this stay. The EPA intended its proposed action to fully reflect the settlement agreement as evidenced by the preamble language providing that EPA would not lift the stay until such time as it considered certain identified issues in a future rulemaking action. See 67 FR 79460. The EPA did not consider it necessary to include such language in the proposed regulatory text as EPA fully intended to comply with such obligation if it took final action providing in the preamble that it would do so. However, EPA understands the concern raised by these commenters—the need for regulatory certainty—and believes it is appropriate to include these conditions in the regulatory text. Thus, EPA is modifying the regulatory text to provide that its regulatory