

ecosystems. This example illustrates why broad-scale analytic approaches appropriately used to estimate stratospheric O₃ impacts are not appropriate for developing credible estimates of the impacts on public welfare of changes in tropospheric O₃ likely to result from attaining a more stringent O₃ NAAQS. Thus, EPA believes that it is not inconsistent to conclude that such quantifiable effects are "real" in relation to large, relatively uniform changes in the stratospheric O₃ reservoir, and to characterize effects that can not be credibly quantified in relation to relatively very small and highly variable changes in tropospheric O₃ associated with attaining a more stringent O₃ NAAQS as "potential" effects at this time.

C. Final Response To Remand on the Secondary O₃ NAAQS

After considering the scientific information available in the record on adverse welfare effects associated with direct exposure to O₃ in the ambient air and on the potential indirect benefits to public welfare related to attenuation of naturally occurring UV-B radiation, and the relevant comments received, the Administrator again concludes that there is insufficient information available on UV-B radiation-related effects that may result from attaining the 1997 O₃ NAAQS to warrant any relaxation in the level of public welfare protection previously determined to be requisite to protect against the demonstrated direct adverse effects of exposure to O₃ in the ambient air. Thus, the Administrator responds to the remand by reaffirming the 8-hour secondary O₃ standard promulgated in 1997, which is identical to the 8-hour primary O₃ standard.

In determining now that the 0.08 ppm, 8-hour O₃ standard set in 1997 is requisite to protect public welfare, the Administrator is finding that such a standard is both necessary and sufficient. While consideration of the potential beneficial effects of ground-level O₃ clearly did not call into question whether this standard was sufficient to protect against the direct adverse welfare effects of ground-level O₃ addressed in EPA's 1997 final rule, it did raise the question as to whether this standard was still necessary in light of potential UV-B radiation-related beneficial effects. Having determined that any potential UV-B radiation-related welfare effects associated with attaining the 1997 O₃ standard are too uncertain to be given any appreciable weight in balancing against the demonstrated direct adverse effects of ground-level O₃ on vegetation, for

which information was sufficient for both quantitative and qualitative assessments that provided the basis for the 1997 secondary O₃ standard, the Administrator has concluded that the weight of evidence of O₃'s adverse effects necessitates a standard no less stringent than the standard set in EPA's 1997 final rule.⁷⁵

As recognized in section II.D with regard to consideration of health effects, the Administrator also recognizes that relevant information on indirect potentially beneficial welfare effects of ground-level O₃ is now available that was not part of this rulemaking record. As previously noted, the next periodic review of the O₃ NAAQS has already been initiated by EPA's ORD and preparation of a revised O₃ Criteria Document that will incorporate such relevant information is now underway. Thus, to ensure that the next review of the O₃ criteria and standards can be based on a comprehensive and current body of relevant scientific information, EPA continues to encourage the submission of new scientific information on the relationships between ground-level O₃, associated attenuation of UV-B radiation and other indirect effects of the presence of O₃ in the ambient air, and effects on public welfare such as those associated with changes in relevant exposures to UV-B radiation.

As noted above in section II.D, EPA's ongoing review and revision of the O₃ Criteria Document is addressing a number of issues related to indirect potentially beneficial health effects of ground-level O₃. In addition to the issues noted above, EPA's review will also consider the available information on the nature of environmental effects associated with changes in solar UV-B radiation mediated by changes in ground-level O₃ concentrations. Based on the revised O₃ Criteria Document, and taking into account CASAC and public comments, EPA also will consider the extent to which the available information provides an adequate basis for developing credible quantitative estimates of potential beneficial environmental effects of ground-level O₃. All such relevant information will be considered in EPA's review of the secondary O₃ NAAQS.

⁷⁵ In so doing, EPA is applying the same decision making standard as it applied in its 1997 final rule, as noted above in section II.D on the primary standard, based on the plain meaning of the word "requisite," consistent with the U.S. Supreme Court's decision in *Whitman*, 121 S. Ct. at 911–12, 914.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, the Agency must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this response is a "significant regulatory action" because of its important national policy implications. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record and made available for public inspection at EPA's Air Docket Center (Docket No. A-95-58).

Since today's final response to the remand is a reaffirmation of the revisions to the O₃ NAAQS previously promulgated in 1997, no new RIA has been prepared. The RIA (1997) prepared in conjunction with the 1997 revision to the O₃ NAAQS is available in the docket, from EPA at the address under "Availability of Related Information," and in electronic form as discussed above in "Electronic Availability."

As a number of judicial decisions have made clear, the economic and technological feasibility of attaining ambient standards are not to be considered in setting NAAQS, although such factors may be considered in the development of State plans to implement the standards. *E.g.*, *Whitman*, 531 U.S. at 471 (2001); *ATA I*, 175 F.3d at 1040–1043. Accordingly, although a RIA was prepared for the 1997 decision to revise the O₃ NAAQS, neither that RIA nor the associated contractor reports have been considered in issuing this final response.