

In 1979, we promulgated the 0.12 ppm (parts per million) 1-hour ozone standard, (44 FR 8202, February 8, 1979). On July 18, 1997, we promulgated a revised standard of 0.08 ppm, measured over an 8-hour period, *i.e.*, the 8-hour standard (62 FR 38856). In general, the 8-hour standard is more protective of public health and more stringent than the 1-hour standard, and there are more areas that do not meet the 8-hour standard than there are areas that do not meet the 1-hour standard.

Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are particularly susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone.

More detailed information on health effects of ozone can be found at the following web site: http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.

III. What Is the Background on Implementation of the 8-hour Ozone Standard?

This action proposes an option that provides incentives for certain areas taking voluntary, early actions for reducing ozone for implementing the 8-hour ozone NAAQS. The option was discussed in EPA's June 2, 2003 proposed rulemaking (68 FR 32859) for implementing that standard. This section presents background information on the June 2, 2003 proposal.

On July 18, 1997, we revised the ozone NAAQS (62 FR 38856) by promulgating an ozone standard of .08 ppm as measured over an 8-hour period. At that time, we indicated that we believed that the 8-hour ozone NAAQS should be implemented under the less detailed requirements of subpart 1 of part D of title I of the CAA rather than the more detailed requirements of

subpart 2. Various industry groups and States challenged EPA's final rule promulgating the 8-hour ozone NAAQS in the U.S. Court of Appeals for the District of Columbia Circuit.¹ In May 1999, the Court of Appeals remanded the ozone standard to EPA on the basis that our interpretation of our authority under the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. *American Trucking Assns., Inc., v. EPA*, 175 F.3d 1027, 1034–1040 (ATA I) *aff'd*, 195 F.3d 4 (D.C. Cir., 1999)(ATA II). In addition, the Court held that the CAA clearly provided for implementation of a revised ozone standard under subpart 2, not subpart 1. *Id.* at 1048–1050.² We sought review of these two issues in the U.S. Supreme Court. In February 2001, the Supreme Court held that EPA's action in setting the NAAQS was not an unconstitutional delegation of authority. *Whitman v. American Trucking Assoc.*, 121 S.Ct. 903, 911–914 (2001) (Whitman). In addition, the Supreme Court held that the D.C. Circuit incorrectly determined that the CAA was clear in requiring implementation only under subpart 2, but determined that our implementation approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. *Id.* at 916–919. The Court also identified some elements of the CAA's classification scheme under subpart 2 that are “ill-fitted” to the revised standard and remanded the implementation strategy to EPA to develop a reasonable approach for implementation. *Id.* Because the D.C. Circuit had not addressed all of the issues raised in the underlying case, the court remanded the case to the D.C. Circuit for disposition of those issues. *Id.* at 919. On March 26, 2002, the D.C. Circuit rejected all remaining challenges to the ozone and fine particle (PM_{2.5}) standards. *American Trucking Assoc. v. EPA*, 283 F.3d 355 (D.C. Cir. 2002) (ATA III).

In response to the Court's remand, we proposed the 8-hour ozone implementation rule on June 2, 2003 (68 FR 32802). We plan to issue a final rule on an implementation approach in the near future.

¹ On July 18, 1997, we also promulgated a revised particulate matter (PM) standard (62 FR 38652). Litigation on the PM standard paralleled the litigation on the ozone standard and the court issued one opinion addressing both challenges. However, issues regarding implementation of the revised PM NAAQS were not litigated.

² The Court addressed a number of other issues, which are not relevant here.

IV. What Actions Is EPA Taking To Designate Areas for the 8-Hour Ozone Standard?

A. What Is EPA's Schedule for Designating Areas for the 8-Hour Ozone Standard?

Section 107(d) of the CAA establishes a deadline for EPA to promulgate designations of areas.³ We have entered into a consent decree that requires us to promulgate designations on a revised schedule.⁴ In a settlement with nine environmental groups, we agreed to designate areas for the 8-hour ozone standard by April 15, 2004. This deadline provided States and Tribes ample time to update their recommendations by July 15, 2003 for nonattainment area boundaries. On November 14, 2002, we issued a guidance memorandum outlining the new designations schedule, requirements for designating Tribal areas, and discussing the impact of the designation schedule on areas that are developing Early Action Compacts.⁵

B. What Action Is EPA Taking To Defer the Effective Date of Nonattainment Designation for Early Action Compact Areas?

At the time we designate areas in April 2004, we plan to take final action to defer the effective date of the nonattainment designation on a rolling basis for participating compact areas that are monitoring a violation of the 8-hour ozone standard, provided all terms of the agreement continue to be met, including timely completion of all compact milestones and reports. In today's rule, we are proposing to establish the first of three deferred effective dates. At the same time we designate all areas either attainment or nonattainment, we will take final action determining whether to defer until September 30, 2005, the effective date of the nonattainment designation for the 8-hour ozone standard for compact areas that are violating the standard, provided

³ Section 107(d) of the CAA sets forth a schedule for designations following the promulgation of a new or revised NAAQS. The Transportation Equity Act for the Twenty-first Century (TEA–21) revised the deadline to publish nonattainment designations for the 8-hour ozone NAAQS to provide an additional year (to July 2000), but HR 3645 (EPA's appropriation bill in 2000) restricted EPA's authority to spend money to designate areas until June 2001 or the date of the Supreme Court ruling on the standard, whichever came first.

⁴ *American Lung Association v. EPA* (D.D.C. No. 1:02CV02239).

⁵ Memorandum from Jeffrey R. Holmstead, Assistant Administrator, to EPA Regional Administrators, “Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts,” November 14, 2002. Docket No. OAR–2003–0090–0003.