
From: "Stephens, Cathy" <Cathy.Stephens@campotexas.org>
Sent: Thursday, November 05, 2009 09:44 AM
To: Carrie Paige/R6/USEPA/US@EPA
Cc: "Gill, Bill" <bgill@capcog.org>
Subject: Request for information on the ozone standard

Hi Carrie,

We have a few questions related to EPA's decision to reconsider the ozone standard. We are hoping that you can provide answers so that we can relay correct information to our elected officials. We appreciate any information you can provide.

I was on the CLEAN AIR Force (CAF) Executive Committee conference call yesterday. Jim Marston with Environmental Defense (ED) chairs the CAF. The committee was discussing EPA's reconsideration of the standard. Jim Marston announced that it appears likely that EPA will not apply the new (widely assumed to be lower than 75 ppb) standard retroactively. In other words, EPA would set the standard and then base designations on the 3 years of data that occur after the standard has been set (so if EPA announced the standard in August 2010, then the designations would be based on 2011, 2012 and 2013 ozone season data). I asked Jim how EPA could stick to their schedule for designating in August 2011 without applying the standard retroactively (using previous years data). Jim's response was the EPA would likely slip the designation timeline.

We know that EPA often works with the environmental groups when crafting policy or standards. It also appears, according to the ED website, that the reconsideration of the standard is at least partially in response to a consolidated lawsuit filed against EPA re the 75 ppb standard. In EPA's notice to the Court regarding reconsidering the ozone standard, EPA indicates they will be discussing the reconsideration action with the parties to the lawsuit. It may be that Jim Marston's announcement is based on discussions with EPA.

Since there were some elected officials on the conference call, we want to make sure that we have the latest, correct information to share with them. We also would like to provide consistent information throughout the region and hope to avoid conflicting interpretations of what will happen regarding EPA's reconsideration. So, we're hoping you can help us with the following questions.

Is Jim Marston's information correct?

What years of monitoring data will be used to determine nonattainment designations for the ozone standard to be finalized in August 2010?

When will the implementation rule for the August 2010 standard be released? Will it still be in two parts? Will there be a comment period following issuance of the implementation rule?

When are the opportunities for public comment regarding the August 2010 standard and subsequent nonattainment designations? Will there be a comment period for the proposed standard announced this December and a comment period for designation recommendations?

[What action is being taken on staying further developments regarding the 2008 standard?](#)

If designation under a new standard is delayed until 2013, with plans due sometime later, will there be any impact on our 8-O3 Flex Program, which is slated to end in 2013?

Will you be available to discuss this at our CACAC meeting on Nov 12th?

Thanks so much for your help.

From: Paige.Carrie@epamail.epa.gov [mailto:Paige.Carrie@epamail.epa.gov]
Sent: Monday, November 09, 2009 10:25 AM
To: Stephens, Cathy
Subject: Re: Request for information on the ozone standard

Good morning Cathy,

(I'm sorry I wasn't able to get this to you on Friday!)

I am available to respond to these questions during your call on Nov 12.

I cannot comment on the validity of Mr. Marston's statements - I have not heard what he heard. EPA's estimated schedule, per the fact sheet and per our twice-monthly ozone designation workgroup calls, (attached below and see www.epa.gov/groundlevelozone): December 21, 2009 - proposed standard will be signed (I'll refer to this as the 2010 standard, since that is the anticipated date of final rulemaking). It may take one to three weeks after signature for the rule to be published in the Federal Register/FR (depending on any edits requested by the FR office and staff schedules around the holidays). The date the proposed rule is published is the date that the public comment period begins. The comment period will be open for at least 30 days.

Action on the 2008 standard (75 ppb) will be limited to deferring or temporarily suspending the designations process only (we will not use the term "stay" as that has legal implications beyond the scope of our action). I understand that this action must be finalized on or before March 12, 2010. EPA will continue to require permitting of new and modified air pollution sources under the Prevention of Significant Deterioration (PSD) program for the 2008 ozone standards.

August 31, 2010 - expected date of signature on the final rule for the 2010 8-hour ozone standard. Per the schedule (fact sheet), designations will not be made until August 2011.

The designations process will be expedited: states will submit their recommendations to us perhaps as early as December 2011, using the most current design values/data available (similar process as under the 2008 standard, but expedited). One could reasonably assume that states could use 2008, 2009, 2010 data, depending on the length of their ozone seasons, and assuming the ozone season data was complete, quality assured, and certified. I suspect the states will submit comments on this timing and other aspects of the proposed rulemaking for the 2010 standard.

August 31, 2011 - final designations will be made, again, based on the most current 3-years of data, which would likely be 2008, 2009, 2010.

Regarding the implementation rule: the implementation rule for the 2008 standard was in draft and was in two parts. If the 2010 standard is different from the 2008 standard, then it's reasonable to assume that the implementation rule would also change. At this point in time, we can only speculate as to what the implementation rule might look like. However, when the rule is proposed, as with all proposed rules, there will be a public comment period of at least 30 days.

When designations under the 1997 8-hour standard were finalized and promulgated in 2004, the implementation rule was published along with the designations. I would assume that this would be the plan for future implementation rules, too.

Let me know if I have failed to answer any of your questions, or if my comments have created more questions!

Carrie Paige
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