

**INTERNAL DELIBERATIVE DOCUMENT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
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**EPA-2659**

**Dave Mckee/RTP/USEPA/US**

03/12/2008 10:09 AM

To Joseph-J Dougherty

cc Mary Henigin, Tricia Crabtree

bcc

Subject Re: Fw: Items needed for ozone final action package

Joe,

Yes, go ahead and scrap the old Action Memo. I have already sent out a revised version here for review and should have it to you soon.

Dave

Joseph-J Dougherty/DC/USEPA/US

**Joseph-J  
Dougherty/DC/USEPA/US**

03/12/2008 09:46 AM

To Dave Mckee/RTP/USEPA/US@EPA

cc Tricia Crabtree/RTP/USEPA/US@EPA, Mary Henigin

Subject Re: Fw: Items needed for ozone final action package 

Thanks again Dave. I understand that the rule significantly changed last night. Should I go ahead and shred the old action memo sent yesterday and wait for a new one?

Dave Mckee/RTP/USEPA/US

**Dave Mckee/RTP/USEPA/US**

03/11/2008 02:23 PM

To Joseph-J Dougherty/DC/USEPA/US@EPA

cc Tricia Crabtree/RTP/USEPA/US@EPA

Subject Fw: Items needed for ozone final action package

Joe,

Tricia jsent me a checklist of thi ngs to send to you. Here are some of them. The rest will come later and tomorrow.

Dave

Just wanted to give you a heads-up on the items that will be needed for the final package. They are:

1. Preamble and Rule (To be sent tomorrow)
2. Communications Materials (Fact Sheet and Communication Plan) (To be sent later)



3. Certification letter to OFR (attached)  mosley letter.pdf



4. Final Action Memo. Ozone NAAQS final decision action memo 3-11-08.doc

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5. RIA (To be sent later)
6. FR Typesetting Request (To be sent up later today)



7. Congressional Review Act Checklist Form (needs to be completed) CRA Checklist Form.doc



OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

Mr. Raymond A. Mosley  
Director, Office of the Federal Register (NF)  
National Archives and Records Administration  
700 Pennsylvania Ave., NW  
Washington, DC 20408-0001

Dear Mr. Mosley:

This letter is to verify that the disk furnished with the final rule "National Ambient Air Quality Standards for Ozone" FRL-\_\_\_\_\_ is a true copy of the original signed document, and should be used by the GPO in preparing the document for publication.

If you have any questions, please contact Dave McKee at (919) [REDACTED]

Sincerely,

A handwritten signature in cursive script that reads "Tricia Crabtree".

Tricia Crabtree  
Health and Environmental Impacts Division

Enclosure

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**MEMORANDUM**

**SUBJECT:** Final Revisions to the National Ambient Air Quality Standards (NAAQS) for Ozone; Tier 1; SAN 5008; RIN-2060-AN24 -- **ACTION MEMORANDUM**

**FROM:** Robert J. Meyers  
Principal Deputy Assistant Administrator (6101A)

**THRU:** Marcus Peacock  
Deputy Administrator (1102A)

**TO:** Stephen L. Johnson  
Administrator (1101A)

**DEADLINE:**

The deadline for signature on this final decision is March 12, 2008. This deadline is part of the court-ordered schedule for the review of the NAAQS for ozone and particulate matter (PM).

**OVERVIEW:**

Attached for your signature is a final rulemaking notice entitled "National Ambient Air Quality Standards for Ozone." Based on the Agency's review of the air quality criteria and NAAQS for ozone, this action includes final revisions to Part 50 of the Code of Federal Regulations. Specifically, the primary and secondary NAAQS for ozone are revised to provide requisite protection of public health and welfare, respectively, and to make corresponding revisions in data handling conventions for ozone.

With regard to a primary standard for ozone, this action includes a final decision to revise the level of the 8-hour ozone standard to 0.075 ppm, providing increased protection for children and other sensitive populations against an array of O<sub>3</sub>-related adverse health effects that range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity including emergency department visits and hospital admissions for respiratory causes, and possibly cardiovascular-related morbidity as well as total nonaccidental and cardiopulmonary mortality. This action also includes a final decision to specify the level of the primary standard to the nearest thousandth ppm.

With regard to a secondary ozone standard, this action includes a final decision to revise the 8-hour standard by replacing it with a cumulative, seasonal 3-month standard with a form expressed as a cumulative peak-weighted index, calculated as the 3-year average of the annual sums of weighted hourly concentrations, cumulated over 12 hours per day (8:00 am to 8:00 pm) during the consecutive 3-month period within the O<sub>3</sub> season with the maximum index value, set at a level of 21 ppm-hours, providing increased protection against ozone-related public welfare effects, including effects on vegetation, ecosystems, and materials damage.

The review of the NAAQS for ozone involved preparation of the *Air Quality Criteria for Ozone* (AQCD) by the National Center for Environmental Assessment of EPA's Office of Research and Development. The AQCD includes the review and integration of the results of thousands of new scientific studies with information that was known at the time of the previous review of the ozone NAAQS. Staff from EPA's Office of Air Quality Planning and Standards conducted human health and environmental exposure and risk assessments and prepared a Staff Paper, the purpose of which was to evaluate the policy implications of the key scientific and technical information contained in the AQCD and identify critical elements that EPA staff believed should be considered in reviewing the NAAQS. The Staff Paper is intended to "bridge the gap" between the scientific review contained in the AQCD and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS. Development of the AQCD, Staff Paper, and exposure and risk assessment technical support documents has included extensive peer review by the Clean Air Scientific Advisory Committee (CASAC) and public review.

### **IMPACTS:**

This final decision does not, in itself, impose specific regulatory requirements. The revisions to the ozone NAAQS will likely require revisions to several State Implementation Plans (SIPs).

### **STAKEHOLDER INVOLVEMENT:**

The development of the AQCD, the Exposure/Risk Assessment, and the Staff Paper has included extensive peer and public review. Numerous opportunities were provided for the public and CASAC to review and comment on multiple drafts of each document. In conjunction with the CASAC meetings, public comments were received from various stakeholder groups, including industry groups, public health and environmental organizations, and some State agencies and related organizations.

Following the Agency's proposed decision to revise the ozone NAAQS, EPA held public hearings across the country to provide direct opportunities for public comment. Five 12-hour public hearings were held in Philadelphia, PA and Los Angeles, CA on August 30, 2007 and in Chicago, IL, Houston, TX, and Atlanta, GA on September 5, 2007, during which 367 individuals

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representing themselves or specific interested organizations provided testimony. In addition, the Agency received several thousand written comments and over 80,000 mass mailer comments during the comment period, which ended October 19, 2007. These comments were received from representatives for industry groups, national medical associations, public health and environmental organizations, State and local agencies, Tribal organizations, as well as many private citizens.

**INTERNAL REVIEW:**

This action was developed under Tier 1. An internal regulatory workgroup was formed for this rulemaking. The Administrator chaired an Options Selection meeting on January 7, 2008, and a Final Agency Review meeting was held on February 14, 2008.

The workgroup included representatives from the Office of General Counsel, Office of Research and Development, Office of Policy, Economics and Innovation, Office of Children's Health Protection, and the Office of Air and Radiation. All workgroup representatives concurred with the Administrator's final decisions, some with comments. Comments received prior to, at and since the Final Agency Review meeting have been addressed, consistent with the Administrator's final decisions.

**PEER REVIEW:**

The Office of Air and Radiation and the Office of Research and Development have followed the Agency's Peer Review policies with respect to the underlying major scientific and technical products supporting this action. Specifically, iterative drafts of the AQCD, Staff Paper, and Exposure and Risk Assessment technical support documents have been extensively reviewed by the CASAC. The CASAC provided detailed comments on all of these documents in letters to the Administrator, based on their discussions at numerous public meetings that have been held, either in person or via teleconference, during this review; specifically, meetings were held in May 2005, December 2005, May 2006, August 2006, and March 2007. In particular, in an October 24, 2006 letter to the Administrator, the CASAC provided advice and recommendations to the Agency concerning the second draft Staff Paper, and in a March 26, 2007 letter to the Administrator following completion of the Staff Paper, the CASAC offered additional advice to the Administrator intended to help inform development of the notice of proposed rulemaking for the ozone NAAQS. The CASAC unanimously concluded that the current primary standard needed to be substantially reduced to protect human health, and recommended a primary 8-hour standard in the range of 0.070 to 0.060 ppm. The CASAC also unanimously supported a secondary standard that is substantially different from the primary standard, and recommended a standard with a cumulative, seasonal form (specifically a form referred to as W126), with a level in the range of 7 to 15 ppm-hours.

**PLAIN LANGUAGE:**

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This final rule is written to meet the requirement for plain language. We have endeavored to write the final rule in an understandable and readable manner. In addition, we have defined scientific and technical terms where appropriate.

**OMB TRANSACTION:**

Pursuant to the terms of Executive Order 12866, OMB has determined that it considers this a "significant regulatory action" within the meaning of the Executive Order. Numerous meetings have been held as part of the interagency review process to present the underlying scientific and technical information upon which the NAAQS review is based, and to address questions from the interagency review group that includes OMB, DOE, USDA, DOI, and other Federal agencies.

**ANTICIPATED EXTERNAL REACTION:**

We anticipate a range of comments on the final decision regarding the primary and secondary ozone NAAQS.

On the final decision to revise the ozone NAAQS, we anticipate that medical and research communities, public health and environmental organizations, some State and local agencies and Tribes will support the Administrator's decision to establish a more protective primary standard but will argue that the evidence supports a lower level of the primary standard which is more protective of public health effects. During the comment period following proposal, we received comments from organizations as well as independent groups of scientists that supported an 8-hour primary ozone standard at much lower levels, such as at 0.06 to 0.070 ppm, consistent with CASAC's recommendations. Environmental organizations have also supported a cumulative, seasonal secondary ozone standard to provide protection for vegetation and ecosystems. We anticipate that these groups will argue that the secondary standard should be set at a level that is more protective of welfare effects. In sharp contrast, we anticipate that industry groups will argue that the Administrator should not have made any revisions to the primary or secondary ozone standards. During the comment period following proposal, we have received comments from organizations for different industrial groups, particularly combustion-related industry groups such as the Utility Air Regulatory Group and the Alliance of Automobile Manufacturers, that have questioned the scientific basis for making any changes to the current ozone standards. Reactions from State, local and Tribal governments and related organizations are likely to vary, with some supporting more protective standards (e.g., California, Northeast States for Coordinated Air Use Management), and others, including several southern States, questioning the need for any revision of the standards.

We anticipate litigation on many aspects of this final rulemaking from a wide range of stakeholder groups, including environmental and public health organizations, agricultural, transportation, utility, and other industry groups, and State agencies.

**STAFF CONTACT:**

For general questions regarding the final amendments to the NAAQS for ozone, please have your staff contact Dr. David J. McKee, OAR/OAQPS/HEID at (919) [REDACTED]. For general questions regarding data handling issues and Appendix P, please have your staff contact Mr. Lance McCluney, OAR/OAQPS/AQAD at (919) [REDACTED], and for general questions regarding monitoring methods, please have your staff contact Mr. Lewis Weinstock, OAR/OAQPS/AQAD at (919) [REDACTED].

**RECOMMENDATION:**

I recommend that you sign this final rule.

Attachments



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OAQPS/AQSSD/HEID/ASG/DMckee/x5288/MD: C504-06

G:user/share/ASG/Ozone/Ozone NAAQS proposal action memo 03-10-08.doc

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Attachment A

CONGRESSIONAL REVIEW ACT  
FINAL RULE/ACTION CHECKLIST

1. Title of Action:

2. Is Rule/Action Subject to Congressional Review Act?  Yes  No

If not subject to CRA, check or state reason below:

- Withdrawal of a direct final rule (see p. 8 of guidance)
- Delisting of site from the National Priorities List
- Rule of particular applicability
- Not a "rule" under 5 USC 551
- Rule relates to Agency management or personnel
- Rule of Agency organization, procedure, or practice that does not affect the rights or obligations of non-Agency parties
- Other (note below)

**STOP HERE IF THE RULE IS NOT SUBJECT TO THE CRA!**

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3. Major Rule:  Yes  No

4. Proposed Effective Date: March 12, 2008

5. Cost/Benefit discussion, if any:

Attached  Addressed in Preamble  See comment below

6. Actions relevant to sections 603, 604, 605, 607, and 609 of the Regulatory Flexibility Act:

Attached  Addressed in Preamble  See comment below

7. Action relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act:

Attached  Addressed in Preamble  See comment below

8. Other information or requirements under any other Act or any relevant Executive Order:

- Paperwork Reduction Act
- National Environmental Policy Act
- E.O. 12866 (Regulatory Planning and Review)
- E.O. 13083 (Federalism)
- E.O. 13084 (Consultation with Indian Tribal Governments)
- E.O. 13045 (Children's Health Protection)
- Other

Comments:

Not pertinent to this action.

[NOTE: Relevant sections can be reviewed on the intranet]

## CRA CHECKLIST INSTRUCTIONS

### RULES/FINAL ACTIONS

Submit the completed form to the Regulatory Management Division (RMD), Office of Policy. It should accompany all rules for the Administrator's signature, and/or rules/final actions to be published in the *Federal Register*. RMD will submit your action to Congress and GAO for CRA review at the same time it is sent to the *Federal Register* for publication. [The OPPTS *Federal Register* Staff will handle liaison with RMD for CRA submissions]. **RMD is the only organization authorized to submit EPA actions to Congress under the CRA.**

Fill out the entire form if your final rule/action is subject to the CRA.

Fill out only questions 1 and 2 if your action is **not** subject to the CRA.

1. Give complete title of the action as it will appear in the *Federal Register*.
2. Your action may not be subject to the CRA if it meets any of the listed criteria. If this is the case, indicate the applicable exception. **Stop here if the action is not subject to the CRA.**
3. A "major" rule under the CRA is one that has an economic impact of \$100 million or more.
4. Enter the effective date as indicated in the preamble. If the action is "major," the effective date **must** be at least 60 calendar days from the date it is published in the *Federal Register*. A non-major rule can become effective upon publication. In some cases, you will need to claim a "good cause" exception from notice and comment in the preamble for the rule to be effective immediately. (Refer to CRA guidance, p.12.)
5. If you have discussed costs in relation to benefits in the preamble, check "addressed in preamble". If you have done a separate cost/benefit analysis as part of a "major" rulemaking, check "attached". Supporting documents, such as cost/benefit or regulatory impact analyses, must also be submitted to Congress under the CRA. [Be sure that these documents accompany the action for signature and/or *Federal Register* publication.] Use the "comment" section to indicate any special circumstances.
6. Indicate your determination with regard to the Regulatory Flexibility Act. This should always be addressed in the preamble, but also may be part of a separate supporting document which may be "attached." Use the "comment" section to indicate any special circumstances.
7. Indicate your determination with regard to the Unfunded Mandates Reform Act. This should always be addressed in the preamble, but also may be part of a separate supporting document which may be "attached." Use the "comment" section to indicate any special circumstances.
8. Indicate any other statutes or executive orders that you discuss in the preamble.