



June 10, 2015

TO: Members, Subcommittee on Energy and Power
FROM: Committee Majority Staff
RE: Hearing entitled “EPA’s Proposed Ozone Rule”

I. INTRODUCTION

On Friday, June 12, 2015, at 9:30 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing entitled “EPA’s Proposed Ozone Rule.” The hearing will examine the Environmental Protection Agency’s pending proposal to revise the current ozone standard.

II. WITNESS

- **The Honorable Janet McCabe**, Acting Assistant Administrator, Air and Radiation, U.S. Environmental Protection Agency.

III. BACKGROUND

Under the Clean Air Act, the Environmental Protection Agency (EPA) has established National Ambient Air Quality Standards (NAAQS) for criteria pollutants, including ground-level ozone.¹ Ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NO_x) and volatile organic compounds (VOC), from either manmade or natural sources, in the presence of sunlight. According to EPA, since 1980 ozone levels have declined by [over 30 percent](#).

EPA initially established an ozone standard in 1971, and subsequently revised the standard in 1979, 1997, and 2008.² The [current standard](#) set in 2008 established an 8-hour standard of 75 parts per billion (ppb), replacing a 1997 standard equivalent to 84 ppb. *See* 73 Fed. Reg. 16,436 (March 27, 2008). EPA has designated 46 areas in 26 States, Indian country, and the District of Columbia, including over 230 counties, as being wholly or partially in nonattainment with the current standard.³ EPA did not publish [implementing regulations](#) for the current standard until March 6, 2015, and States are due to submit plans later this year.

¹ Criteria pollutants include ozone, particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide and lead. *See* EPA [NAAQS website](#).

² *See* [Table of Historical Ozone NAAQS](#).

³ *See* [Map, Nonattainment Designations for the 2008 Standards](#).

While States are just beginning to implement the current standard, EPA has proposed to lower that standard to a range within 65 ppb to 70 ppb.⁴ *See* 79 Fed. Reg. 75,234 (Dec. 14, 2014). The agency also has requested comment on lowering the standard to 60 ppb as well as on retaining the current standard of 75 ppb.⁵ *Id.* at 75,236. EPA is subject to a court order that requires a final rule by Oct. 1, 2015. *Id.*

Under the rule as proposed, hundreds of counties with ozone monitors would violate EPA's proposed new standard. EPA projects that under a 70 ppb standard, [358 counties](#) with monitors would not meet the standard, while [558 counties](#) would violate a 65 ppb standard.⁶ These estimates do not include contiguous counties that do not exceed the standard but that may be designated to be in nonattainment. These estimates also do not include the more than 2,000 counties nationwide that do not currently have ozone monitors.⁷ Counties designated to be in nonattainment would become subject to new emissions control requirements, transportation conformity requirements, and more stringent permitting requirements and restrictions on growth, affecting new manufacturing, construction and Federal highway funding.

Under the proposed rule, States with nonattainment areas would be required to submit detailed plans to EPA indicating how they would reduce NOx and VOC emissions to meet the new standard.⁸ As proposed, States would be required to submit recommended designations by Oct. 1, 2016; EPA would respond to those designations by June 1, 2017; EPA would issue final designations by Oct. 1, 2017; and States would be required to develop implementation plans to meet the new standard in the 2020 to 2021 timeframe, and to meet the primary standard between 2020 to 2037, depending on the severity of an area's ozone problem.⁹ States and localities must

⁴ *See* [Proposed Rule](#); [Regulatory Impact Analysis \(RIA\)](#); [Overview Fact Sheet](#). For additional rulemaking documents, see [Ozone Regulatory Actions](#). EPA is proposing to revise both the "primary" ozone standard, to protect public health, and the "secondary" standard, to protect the public welfare. *See* [Overview Fact Sheet](#). Both standards would be 8-hour standards set within a range of 65 to 70 ppb. *Id.* The comment period for EPA's proposed rule closed March 17, 2015, and EPA's [docket](#) indicates the agency has received over 434,000 comments.

⁵ In 2009, EPA announced it would not implement the 2008 standard, and in early 2011 proposed new standards in the range of 60 to 70 ppb. In 2011, however, the President directed EPA to withdraw its proposal, stating "I have continued to underscore the importance of reducing regulatory burdens and uncertainty, particularly as our economy continues to recover." *See* [September 2, 2011 Presidential Statement Re Proposed Ozone Standards](#); *see also* [September 2, 2011 Letter from OIRA Administrator Cass Sunstein to EPA Administrator Jackson](#).

⁶ *See* EPA [List](#) of Counties (based on monitored air quality data from 2011-2013); *see also* EPA [Interactive Map](#).

⁷ In February 2015, EPA advised Committee staff that there are an estimated 2,409 counties without ozone monitors.

⁸ EPA states in the proposed rule: "The majority of man-made NOx and VOC emissions that contribute to O3 formation in the U.S. come from the following sectors: On-road and nonroad mobile sources, industrial processes (including solvents), consumer and commercial products, and the electric power industry." 79 Fed. Reg. at 75,370. EPA acknowledges that background ozone levels, including from natural and international sources, can be significant and that "there can be events where [ozone] levels approach or exceed the concentration levels being proposed in this notice (*i.e.*, 60-70 ppb) in large part due to background sources." *Id.* at 75,382.

⁹ *See* [EPA's Proposal To Update the Air Quality Standards For Ground-Level Ozone: Designations, Monitoring and Permitting Requirements](#). These dates are projected dates and depend on the effective date of the final rule.

also comply with transportation conformity requirements to assure that all Federally funded or approved highway and transit projects are consistent with a State's plan.

EPA estimates that annual costs to implement the ozone rule (excluding California) would be \$3.9 billion to \$15 billion for a standard in the range of 65 to 70 ppb, and \$39 billion for a 60 ppb standard, in 2025. *See* RIA at ES-14. In making its cost estimates, the agency projects that significant "unknown controls" would be needed to meet a 65 ppb as well as a 70 ppb standard.¹⁰ Private sector analysis of EPA's proposed rule has concluded the costs could be significantly higher than those estimated by the agency, and that the rule could be the single most expensive regulation in the EPA's history.¹¹

In the rulemaking docket, commenters have raised concerns that EPA's proposed changes to the existing standard could drive many counties across the country into nonattainment and make it significantly more difficult to obtain necessary air permits for new construction and business expansion. Commenters have raised a range of additional concerns, including that the rule would require reductions that are extremely costly, may not be attainable due to natural sources and foreign emissions, and may adversely affect consumers. They also raise concerns that the public health benefits estimated by EPA are highly uncertain, and note ozone levels have been reduced substantially and will continue to decline even in the absence of the rule.

IV. ISSUES

The following issues relating to EPA's proposed rule may be examined at the hearing:

- The costs and feasibility of complying with the proposed rule;
- Potential impacts on States and local governments;
- Potential impacts on regulated entities and consumers; and
- Potential impacts on jobs and economic growth.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Mary Neumayr or Tom Hassenboehler of the Committee staff at (202) 225-2927.

¹⁰ EPA states that "unknown controls for the 70 ppb alternative standard are needed in the Northeast and Central regions," and that "unknown controls for the 65 ppb standard are needed in the Northeast, Central, and Midwest regions." [RIA](#) at 4-21.

¹¹ NERA Economic Consulting prepared a February 2015 [report](#) estimating that revising the current standard from 75 ppb to 65 ppb could reduce U.S. Gross Domestic Product by \$140 billion per year on average over the period from 2017 through 2040, and result in 1.4 million fewer job equivalents per year on average through 2040.