

# **Ozone Advance**

## **Summary of Questions Submitted During Feb. 22, 2012 Webinar**

### **Eligibility**

Q: Can counties or cities participate?

A: Yes, either or both together can participate.

Q: Is there a minimum geographic size for participation? Can a township participate?

A: Local governments should consult with EPA before signing up for the program.

Q: Would all jurisdictions within an MSA have to join in the program in order for a local area to participate in Ozone Advance, or could one governing body within an MSA participate if other governing bodies choose not to?

A: In general, we expect that one governing body within an MSA could participate if other governing bodies chose not to. The local area should consult with EPA before signing up for the program.

Q: Will EPA work with local areas, even if the state does not participate?

A: Yes, although it will be important to keep the state informed about the area's efforts in the program, and certain aspects of the program may necessitate coordination with the state, for example determining which air monitor(s) reflect the air quality in the area.

Q: Can a Regional Council of Governments be a participant?

A: Yes, they could participate.

Q: Can a state/local sign up for Ozone Advance with regard to a particular area prior to designations even though the area will likely be designated nonattainment?

A: Yes, although once designated, they could only continue participating if the classification is no higher than Marginal.

Q: If an area is about to be designated as NA, Marginal, how is it eligible for the program?

Doesn't Ozone Advance only apply to attainment areas?

A: The area is eligible to sign up for Ozone Advance prior to designation, but is no longer able to sign up after a nonattainment designation is made. If the area signs up prior to designation, the state, tribe, and/or local government participant(s) would be able to continue participating in the program as long as the area is not reclassified to a higher classification (i.e. Moderate or higher).

Q: Why must an area have an approved 1997 ozone NAAQS maintenance plan in order to apply? Our maintenance plan has not been approved, and we are waiting until guidance is available for the 2008 standard before reopening that plan. We are currently attaining both standards.

A: The program is intended for attainment areas, including those with approved maintenance plans. However, that does not mean early progress cannot be made. If a state has submitted a maintenance plan to EPA, pending EPA approval of the plan EPA could consult with you and provide some level of assistance. Full participation in Ozone Advance would not occur until the area has been redesignated attainment with an approved maintenance plan, and has met the other program eligibility criteria, i.e., identify the monitor(s) that reflect the area's air quality and ensure that emissions inventory reporting requirements have been met.

Q: Does EPA plan to issue guidance on the selection of a representative monitor for a local area?

A: Selection of a representative monitor that reflects the air quality in the area should be made in consultation with your state and your EPA Regional Office.

Q: If an area must identify air monitor(s) that reflect air quality in the area, how would this requirement apply to an unclassifiable area that does not have an air monitor in place?

A: Selection of a representative monitor, whether for an unclassifiable area or otherwise, should be made in consultation with your state and your EPA Regional Office.

Q: Can a tribe with only jurisdictional boundaries (i.e., no reservation) participate in this program?

A: Yes, although the tribe would need to meet the other program eligibility criteria, including the need to identify the air monitor(s) that reflect the air quality in the area.

Q: Who is the responsible party for signing up for Ozone Advance?

A: States, tribes, and/or local governments are eligible to sign up for Ozone Advance. Other interested parties, such as stakeholder groups, should be involved in the program in conjunction with the state, tribal, and/or local participant(s).

## **Measures**

Q: Who is responsible for implementing the measures and programs?

A: The participant(s) would generally be responsible for implementing the measures/programs selected, although to the extent other parties (like stakeholder groups) are involved, they may also become the lead for some aspects of implementation.

Q: Can our efforts within Ozone Advance relate to alternative fuels or ideas to reduce power usage from power plants, etc?

A: Yes, alternative fuels and energy efficiency measures/programs could potentially be undertaken as part of the program.

Q: What kind of local controls are there? Do local controls have to be implemented by the state?

A: The state does not have to implement all controls; some measures/programs can be undertaken at the local level, such as by a city or county. These could include such things as local ordinances and voluntary programs.

Q: We fully support early voluntary action. But we need to be honest about what will really solve the problem in the areas that may choose to participate in Ozone Advance. Shouldn't this guidance start off by recognizing that the most important effort related to moving ozone in the right direction for these "on the edge" areas are EPA's efforts to adopt Federal programs to reduce regional ozone (or transport) like the CSAPR and Tier 3/LSF. Most of these areas are seeing ozone close to the standard because of regional pollution – not local pollution. The reason that the EAC program worked was the NO<sub>x</sub> SIP Call reduced regional ozone dramatically - the local measures from EAC programs were a little help, but it was the NO<sub>x</sub> SIP Call that drove the ozone levels down. I believe it is important to be consistent with the science.

A: EPA will continue to promulgate Federal measures that address national ozone levels, however local action is still needed in some areas in order to attain. Many Marginal areas are expected to attain the 2008 ozone NAAQS within 3 years of designation (e.g., in 2015) due to reductions of ozone precursors resulting from a number of federal and state emission reduction programs that have already been adopted. Such programs include more stringent emission standards for onroad and nonroad vehicles and equipment (with associated fleet turnover), regional reductions in power plant emissions to address interstate transport, and potential future programs such as the boiler maximum achievable control technology standards. EPA estimates that in about half of the Marginal areas, these reductions in conjunction with other ongoing state and federal controls should be sufficient to bring about attainment. In other areas, additional control measures may be needed for timely attainment. Ozone Advance is meant to facilitate actions that reduce emissions to provide an ample buffer against future nonattainment; while federal measures are likely to bring some Marginal areas back into attainment, these areas should consider taking steps to better ensure that once they return to attainment, they will remain in attainment.

Q: If a plan is developed and at the time of implementation funds are not available, are we required to pursue the plan?

A: The path forward (or broader action plan) developed by Ozone Advance participants would not be binding. Failure to implement the measures/programs laid out in the path forward could reduce the area's anticipated buffer against nonattainment. And, a participant that does not take steps to reduce ozone precursors during the program could be dropped from the program.

## Resources and Support

Q: What kind of technical assistance does EPA anticipate being able to provide?

A: If a participant is interested in refining their emissions inventory or conducting a modeling analysis, EPA would not do this work for the participant, but would provide directional advice and suggestions to ensure that available resources are used efficiently and effectively. EPA can also provide support in terms of directing participants to available tools and technical resources, as well as emission reduction options that could feed into the strategy chosen by the participant.

Q: Can EPA perform modeling for 2015 for Ozone Advance so that the area could have a future baseline to work with and modeling tools to test strategies? This year would be useful since it would likely be used for designating areas nonattainment for any revised 2014 ozone standard.

A: [We are coordinating with our modeling group on this response]

Q: Has EPA identified areas that are at risk of sliding into nonattainment without local controls?

A: [We are coordinating with our modeling group on this response]

Q: Will EPA assistance include modeling of control strategies?

A: [We are coordinating with our modeling group on this response]

Q: Will you be able to recommend model rules?

A: To a certain extent, yes. We will also assist with identification of example voluntary emission reduction measures and controls.

Q: Could EPA assist local entities such as planning councils that do not have any authority to obtain data from businesses to improve emissions estimates?

A: To the extent EPA has these data it can generally share them, subject to any relevant confidential business information (CBI) restrictions. Emissions data are not CBI, however other information may be protected from disclosure.

Q: Step 2 of the program requires identification of the degree of local contribution to ozone. Will EPA provide help in doing this and is there a threshold?

A: Step 2 is aimed at identifying available information regarding the area's ozone issue. To the extent a participant would like to develop this information where it is not already available, EPA can provide screening tools and technical consultation to help determine the degree of local contribution. There is no threshold for the degree of local contribution; this information would simply be helpful in understanding the area's ozone issue.

Q: Will EPA offer any resources to areas?

A: There are no specific sources of funding identified for Ozone Advance participants at this time.

Q: Would Ozone Advance participants receive preference for grants?

A: We are investigating this as a possibility, however there are no firm plans for this at present.

Q: Can EPA make additional/supplemental monitoring funding available to areas that participate in Ozone Advance?

A: There is no anticipated funding associated with the Ozone Advance program, however we can assist you with identifying appropriate grant opportunities run by other programs.

Q: Will modeling demonstrations be required as part of Ozone Advance be such as would be Needed for any eventual SIP?

A: Modeling can be useful in the Ozone Advance program, but it is not required. If a participant decides to conduct modeling, EPA can provide advice in order to ensure that available resources are used efficiently and effectively. Such modeling would not necessarily be of the sort that would be needed for any eventual SIP.

Q: Is the Ozone Advance program grant funded and will a city match be required?

A: Ozone Advance is not grant funded.

### **Eventual SIP Credit**

Q: What assurance can you provide that emission reduction measures undertaken as part of Ozone Advance will receive SIP credit if the area is initially designated attainment and subsequently redesignated nonattainment?

A: There are no guarantees that every measure/program undertaken within Ozone Advance would receive SIP credit. EPA will not provide any kind of prior approval of measures/programs for eventual SIP purposes as part of Ozone Advance. We expect, however, that early reductions can generally be accounted for either (1) within an eventual SIP baseline, with regard to reductions achieved before the baseline year, or (2) as a control measure (to the extent the measure is quantifiable, surplus, federally enforceable, and permanent and meets any other applicable requirements), with regard to reductions achieved after the baseline year. In addition, it is always possible for a state to adopt measures into its SIP.

Q: Explain the various areas where EPA has discretion to be flexible with regard to regulatory requirements. For instance, to what extent does EPA have discretion in setting the baseline?

A: This question is beyond the scope of the Ozone Advance program. The 2012 ozone implementation rule will provide some guidance on baseline setting, and your EPA Regional Office can discuss this issue with you.

Q: One of the requirements for a nonattainment area is a 15% reduction in emissions of VOCs. Would early reductions under Ozone Advance be creditable for the RFP/ROP 15 % requirement?

A: For RFP, reductions that occurred before the baseline year for calculating the 15% would be reflected in a reduced baseline; reductions that occur after the baseline year but during the RFP period could be counted toward the 15% reduction requirement. Please contact your EPA Regional Office with more specifics regarding your situation.

Q: If we were to incorporate activities done in Mexico in collaboration with U.S. border cities in our path forward or action plan, will these reductions be considered for SIP credits?

A: Ozone Advance participants are not required to submit attainment SIPs, given that they are either designated attainment, or they are nonattainment with a Marginal classification and thus do not have planning requirements. EPA will not, in the context of Ozone Advance, be able to provide early approval of measures/programs for purposes of any eventual SIP. The area should follow the requirements of Clean Air Act section 179B "International Border Areas," which addresses international emissions emanating from outside of the United States.

Q: If control measures are adopted under the Ozone Advance program, would these be regarded as formal SIP commitments?

A: No. Ozone Advance participants do not have SIP planning requirements. EPA will not, in the context of Ozone Advance, be able to provide early approval of measures/programs for purposes of any eventual SIP. Please discuss your specific situation with your EPA Regional Office.

### **Timing of Initial Designations**

Q: Ozone nonattainment designations are expected later this spring. Will these be based on 2008-10 data?

A: The designations will be based on 2008-2010 data unless a state has made early certification of 2009-2011 data.

Q: When is EPA releasing the next ozone designation?

A: We anticipate releasing those designations May 31, 2012.

### **Ozone Implementation Rule**

Q: Would EPA consider including Ozone Advance more formally in rulemaking for the ozone implementation rule?

A: Ozone Advance is mentioned in the preamble to the implementation rule. It is not itself a regulatory program, however.

Q: Will EPA use flexibility in selecting the baseline year to capture the reductions eligible for ROP?

A: The 2012 ozone implementation rule will provide guidance on setting baselines for ROP purposes.

## **Redesignation to Nonattainment**

Q: Could EPA issue guidance being more specific about how Ozone Advance would be considered in exercising discretion to redesignate an attainment area to nonattainment? For instance, can EPA indicate that if the design value for an area was below a certain level yet still above the standard, the Administrator will not designate the area nonattainment out of cycle?

A: EPA would follow Clean Air Act section 107(d)(3)(A). Participation in the program would be one of several factors considered by EPA in determining whether to redesignate an area to nonattainment. It would not be the only factor.

Q: Could EPA consider excluding particular jurisdictions from a future nonattainment area based on participation in Ozone Advance? For instance, a suburban county in a metro area?

A: The ozone designations process is separate, and Ozone Advance participation does not affect that process, other than as a factor in considering whether to exercise discretion to redesignate attainment areas to nonattainment due to subsequent violations.

Q: Do you have data on how frequently (% of potential actions) and how quickly EPA initiated a discretionary redesignation for areas that were initially designated attainment but subsequently violated the standard?

A: The EPA Regional Offices are responsible for working with states that have areas that have violations. OAQPS has worked with Regional Offices in some cases to redesignate violating areas to nonattainment. This has not been a frequent occurrence, however it can and does happen.

Q: Is there guidance for designations after the initial round of designations? How would participation in Ozone Advance inform EPA's discretion in designating violating areas nonattainment in the future?

A: EPA is guided by Clean Air Act section 107(d)(3)(A), which indicates that EPA consider "air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate," including time to allow the implemented control measures to work. As long as Ozone Advance control measures are being fully implemented and appropriately documented, EPA would consider that circumstance among the other factors specified in the Act when exercising its discretion whether to redesignate the area to nonattainment.

Q: In the presentation, you indicated that "EPA could consider early efforts as a factor in exercising its discretion to redesignate areas not violating in 2008-10 but violating in future years to nonattainment." Isn't this discretion generally used to redesignate from nonattainment to attainment?

A: After initial designations under a new or revised NAAQS, section 107(d)(3)(A) of the Clean Air Act indicates that EPA would consider "air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate" in determining whether to redesignate a violating area to nonattainment.

Q: Does this mean that EPA may designate an area by using 2009-2011 data as nonattainment if they do not participate?

A: If an area is initially designated attainment based on 2008-2010 data, but subsequently violates the standard, EPA would consider the Clean Air Act section 107(d)(3)(A) factors in determining whether to redesignate the area to nonattainment. EPA would consider these factors whether or not a state, tribe, and/or local government is currently participating in Ozone Advance with respect to the area, i.e. participation in Ozone Advance would not shield the area from being redesignated. Participation in Ozone Advance would potentially be one of the set of factors considered by EPA in determining whether to redesignate.

Q: You indicated that "EPA could consider early efforts as a factor in exercising its discretion to redesignate areas not violating in 2008-10 but violating in later years to nonattainment." Later, you stated that "Program does not provide regulatory flexibility". What EPA discretion do the regulations allow that might be granted to Ozone Advance participants?

A: After initial designations under a new or revised NAAQS, the Clean Air Act (as opposed to regulations) allows the EPA Administrator to use discretion to designate areas that subsequently begin to violate. The factors to be considered are described in the Act. Participation in Ozone Advance may be one of the set of factors EPA would consider.

Q: The answer given regarding redesignation to nonattainment is not consistent with the program guidance. I read the guidance to suggest that EPA can and may exercise discretion regarding designation.

A: After initial designations under a new or revised NAAQS, the Clean Air Act allows the EPA Administrator to use discretion to redesignate areas that subsequently begin to violate.

### **Participation**

Q: What if an area signs up for Ozone Advance and is then later designated attainment for the 2008 NAAQS, does Ozone Advance go away?

A: No, the area should continue to participate. The program is aimed at keeping attainment areas in attainment by encouraging the implementation of emission reduction measures and programs that can provide a buffer against nonattainment.

Q: Are there EPA Regional Office contacts we can talk to in order to discuss the pros and cons of becoming an Ozone Advance participant?

A: Yes, here is the list of EPA Regional Office contacts for Ozone Advance:

R1 Anne Arnold	R6 Carrie Paige
R2 Paul Truchan	R7 Lachala Kemp
R3 Cristina Fernandez	R8 Jody Ostendorf and Scott Jackson
R4 Jane Spann	R9 John Kelly
R5 Steve Rosenthal	R10 Claudia Vaupel

Q: Can you identify any partners that have helped with developing this framework? It would be helpful for us to get their perspective.

A: The program framework is generally the same as was provided in the Ozone Flex program, which was developed by EPA Region 6.



Q: Given that we can work on proactive emissions reduction programs without the need for Ozone Advance, what is the advantage of signing up for the program?

A: It is absolutely true that you can undertake proactive efforts to reduce ozone precursors without EPA's involvement. However, some areas may see a benefit in working collaboratively with EPA, within the program framework which can serve as a rallying point for action and public awareness.

Q: What would be a detailed example of a successful program?

A: Detailed examples would be area specific. Generally, through, reductions in ozone precursors would be an indication of a successful program, with the goal of staying in attainment.

Q: Are there any consequences to signing up and not meeting the participation requirements?

A: There are no consequences per se, although EPA could terminate the state's, tribe's, and/or local government's participation in the program. In addition, air quality might deteriorate, making an eventual nonattainment designation more likely.

Q: What are the downsides of signing up for the program?

A: There is not really a downside; the program is simply meant to provide closer assistance to attainment areas that want it in order to facilitate their efforts to pursue emission reductions. EPA is available to talk with you about the benefits the program may offer your area.

## **Transport**

Q: The guidance does not address states' transport obligations under CAA section 110(a)(2)(D). Can you address that issue in the final guidance?

A: The guidance recognizes that some areas are affected by transport of upwind pollution, however it is still important for local reductions to be achieved, where possible.

Q: How does Ozone Advance relate to the requirement not to significantly contribute to downwind states' nonattainment or maintenance issues?

A: The Ozone Advance program is not intended to address the significant contribution requirement in Clean Air Act section 110(a)(2)(D).

Q: Is there anything in the program that could provide an incentive to states to address their 110(a)(2)(D) obligations?

A: No, not really. The Ozone Advance program is not intended to address the transport requirements of Clean Air Act section 110(a)(2)(D).

## **Ozone Flex and Ozone Advance**

Q: Can areas choose to participate in either Ozone Flex or Ozone Advance?

A: Areas that participated in Ozone Flex are welcome to revise their existing Ozone Flex action plans in order to meet the 2008 standard, and they may either choose to sign up for Ozone Advance and continue to implement their action plans in that context, or may simply remain in the Ozone Flex program, assuming they continue to meet the eligibility criteria. Areas that have not participated in either program may sign up for Ozone Advance.

Q: What advantage is there to an area in changing from Ozone Flex participation to participation in Ozone Advance?

A: We have developed a comparison table to highlight the differences and similarities between Ozone Flex and Ozone Advance. You should talk with your EPA Regional Office to determine whether there are advantages to your participating in one program vs. the other. Note that EPA is not accepting new participants in the Ozone Flex Program, so this decision only relates to areas that have already participated in Ozone Flex in the past.

Q: Ozone Flex required a Memorandum of Agreement (MOA) between the participant(s) and EPA. Would EPA still support Ozone Flex and sign new MOAs if an area decides to continue with the Ozone Flex program?

A: Yes. An MOA/MOU may be developed under either program, although MOA development is a necessary step in Ozone Flex and is optional in Ozone Advance. Current Ozone Flex areas that already have MOAs in place do not necessarily need to develop and sign new agreements at this point, however; their agreements may contain provisions that allow for their supplementation/revision and renewal.

Q: Can emission reduction measures currently included in an area's Ozone Flex plan also be referenced in their Ozone Advance path forward or action plan?

A: Yes, although to the extent the area needs additional reductions in order to ensure continued attainment of the standard (given that the current Ozone Flex plans relate to the 1997 standard, while the Ozone Advance path forward (or broader action plan) will relate to the 2008 standard), the area should supplement its plan with additional measures.

## **Webinar Information**

Q: What is the web site where the slides for the webinar are posted?

A: [www.epa.gov/apti/webinars.html](http://www.epa.gov/apti/webinars.html)

Q: Will EPA be hosting another webinar on Ozone Advance in the near future?

A: We are considering offering a webinar a few weeks after the start of the program in order to explain the final version of the guidance and answer prospective participants' questions about the program. If possible, we would like to invite an Ozone Flex area to discuss their experience with the program.