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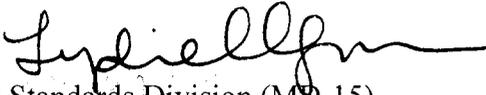
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OCT 29 2001

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: National Consistency - 1 Hour Ozone National Ambient Air Quality Standard (NAAQS) Reinstatement

FROM: Lydia Wegman, Director 
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TO: Air Directors, Regions I-X

At the time EPA promulgated the revised 8-hour ozone standard, EPA also promulgated a rule providing that the 1-hour standard would no longer apply (i.e., would be "revoked") for an area upon a determination that the area had attained the 1-hour ozone standard. During 1998 and 1999, we revoked the standard for over 3000 counties in three separate rulemaking actions. However, in response to an opinion in which the Court of Appeals for the District of Columbia Circuit remanded the revised 8-hour ozone standard and held that EPA could not "enforce" that standard, EPA issued a rule reinstating the 1-hour standard for all areas for which it had previously been revoked. 65 FR 45182 (July 20, 2000).

The purpose of this memorandum is to help ensure national consistency in dealing with reinstatement of the 1-hour ozone standard in areas where it had previously been revoked. Under the reinstatement rule, the designations and classifications that previously applied in areas for the 1-hour standard once again applied on October 18, 2000, for most areas, and on January 16, 2001, for nonattainment areas with clean air quality based on data from 1996 to 1998. In response to the reinstatement action, we formed a Regional EPA workgroup to focus on issues concerning implementation of the 1-hour standard in the reinstatement areas. The workgroup has initially focused on attainment/maintenance areas that had violations during the revocation period and may/or may not still be experiencing violations of the 1-hour ozone standard upon reinstatement. After considering the recommendations of that group, the Office of Air Quality Planning and Standards (OAQPS) is establishing the following national policy for addressing some initial questions concerning implementation of maintenance plans in areas that have continued to violate the 1-hour ozone standard. I anticipate that further policies will be issued as additional recommendations are made by the Regional workgroup.

QUESTION 1:

What happens to maintenance areas that were violating during the period that the 1-hour standard was revoked, but had three years of clean data at the time the standard was reinstated and have remained clean for the 1-hour ozone standard? Do they still need to implement contingency measures?

RESPONSE 1:

Areas that had clean data at the time the standard was reinstated and that have continued to meet the 1-hour standard do not need to implement contingency measures at this time. However, as provided in response to question 4, these areas should ensure that their approved SIP contains contingency measures, including the appropriate triggers, that would be implemented if a violation of the 1-hour standard occurs in the future.

QUESTION 2:

Can States use the NO_x SIP call rules for their contingency measure? If so, do they have to formally revise their maintenance plan?

RESPONSE 2:

Yes, NO_x SIP call rules can be used for contingency measures in a maintenance plan. If NO_x rules are already listed as possible contingency measures, then there is no need to revise the SIP, i.e., if your SIP already had language that could be construed as referring to the NO_x SIP call and it could be adopted and implemented within the time period from a violation that the SIP specifies. However, in the event that there is no mention of NO_x rules in their contingency plan, then States should modify/revise their SIPs to include the approved NO_x SIP call rules as contingency measures that would take effect in the event of a violation of the 1-hour standard. There may still be a real timing issue, e.g., if the contingency plan says rules are to be adopted and implemented within 2 years of a violation and the SIP call doesn't meet that time frame. Consequently, the State could be sued to choose one of the measures already on its list and the State can be held to the existing SIP until such is revised. It would not be sued for a specific single measure but rather to adopt and implement one of the measures on the list. The NO_x SIP call rules may not provide sufficient near-term reductions to fulfill the purpose of the contingency measures. Under the SIP call, as modified by the court of appeals, States need not require implementation of the NO_x-reducing measures until May 31, 2004. Although some states have retained the initial May 2003 compliance date, even that date is over 30 months following the effective date of the reinstatement for areas that were violating the standard at the time of reinstatement and continue to violate that standard. These areas will need to implement other contingency measures to show progress prior to May of 2003 or 2004. Therefore, if the NO_x SIP call is to be used as contingency measures, then progress prior to 2004 needs to be demonstrated.

QUESTION 3:

What sort of time frame is necessary for implementing contingency measures and at what time does the clock start?

RESPONSE 3:

Implementation of contingency measures should occur as expeditiously as possible. The EPA's general policy has been that contingency measures should be implemented in the year following a violation, but has, on a case-by-case basis, allowed for implementation to occur over a slightly longer time frame. In the preamble to the reinstatement rule, EPA explicitly recognized that for maintenance areas violating the standard at the time of reinstatement, the time period should run from the effective date of reinstatement, rather than the time of violation since those areas were not on notice of the need to implement contingency measures until EPA finalized the reinstatement rule. 65 FR pg. 45190 ("The EPA is not requiring that the time for States to implement contingency measures runs from the time of the violation, but rather from the effective date of the reinstatement of the standard.")

QUESTION 4:

What is the schedule for corrective actions in areas that were reinstated as attainment based on 1996-1998 data, but that are now experiencing violations of the 1-hour standard (based on exceedences registered prior to or after the reinstatement becoming effective)?

RESPONSE 4:

These areas should follow the guidance in preamble to the reinstatement rule, i.e., they should work with the relevant EPA Regional Offices to develop a strategy for bringing the areas back into attainment. Specifically, the preamble to the reinstatement rule provides that "to the extent additional measures are needed, EPA believes that it is reasonable for States to adopt measures to address any violations within 6-9 months of the effective date of this final action. The EPA is recommending 6-9 months as the presumptive period for action; however, each State should work with the relevant EPA Regional Office to develop a strategy for specific areas." 65 FR pg. 45189.

QUESTION 5:

What happens where a State eliminated the "triggers" for contingency measures during the time that the 1-hour standard did not apply for that area (i.e., was revoked)?

RESPONSE 5:

In the preamble to the reinstatement rule, EPA made it clear that if contingency measures were removed from the SIP during the time that the 1-hour standard did not apply, then the State would need to revise their SIP to include the same or different contingency measures . 65 FR 45190 (“States will need to move forward to put contingency measures back into the SIP.”) The trigger – i.e., the identification of the event that would cause one or more contingency measure to be implemented- is an integral part of the contingency measure. Thus, for areas that removed the trigger mechanism, the same policy applies. The State in which such an area is located should submit a SIP revision to replace the trigger mechanism. At a minimum, the State must require that the contingency measure is triggered upon a violation of the 1-hour ozone NAAQS; however, other triggers that would provide for earlier implementation of contingency measures may also be approvable.

QUESTION 6:

What is EPA’s policy on violations of the 1-hour ozone NAAQS attributable to wildfires?

RESPONSE 6:

The EPA’s current policy addressing this issue is “Guidance on Assessing the Impacts of May 1998 Mexican Fires on Ozone Levels in the United States,” 11/10/98.

This memo does not cover all the questions that may occur due to the reinstatement of the 1-hour ozone standard. The Regional workgroup will continue to consider issues and make recommendations as to their resolution. As appropriate, OAQPS will follow-up with additional guidance. If you have further questions, please contact Annie Nikbakht of the Ozone Policy and Strategies Group at (919) 541-5246.