

Ozone Secondary NAAQS

- **Options** *are to set a secondary National Ambient Air Quality Standard (NAAQS) for ozone:*
 - *that accumulates over the course of a season (called a “seasonal form”) and at a level generally less stringent than the primary standard or*
 - *that averages over the course of 8 hours and at a level equal to the primary standard.*

- **Legal Background**
 - The primary ozone standard protects people. The secondary ozone standard protects welfare such as sensitive ecosystems and forests.
 - The Clean Air Act requires a secondary NAAQS that, in the Administrator’s judgment, “is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.”
 - “Welfare” includes effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.
 - “Welfare” does not include the consideration of costs. “EPA may not consider implementation costs in setting primary and secondary NAAQS.” *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 486 (2001).
 - EPA must complete its multi-year review of the ozone standard by issuing a final decision tomorrow.
 - Criteria Document in March 2006
 - Staff Paper in January 2007
 - Proposal in June 2007
 - Option selection in January 2008

The seasonal form is the most scientifically defensible. Ozone decreases the ability of plants to produce and store food. The impact of repeated ozone exposure accumulates over the course of the growing season. Key scientific uncertainties have been substantially addressed since the last review in 1997. The new evidence includes a broader array of vegetative effects and a diverse set of research studies looking at the effects of ozone in the real world.

The Administrator's decision is consistent with *scientific* advice.

- The National Academy of Sciences (NRC 2004) stated “[w]hatever the reason that led EPA to use identical primary and secondary NAAQS in the past, it is becoming increasingly evident that a new approach will be needed in the future. There is growing evidence that the current forms of the NAAQS are not providing adequate protection to sensitive ecosystems . . .”
- The National Park Service stated there is “abundant evidence that it is appropriate to establish an alternative cumulative secondary standard for ozone” and that “a seasonal, cumulative metric is needed to protect vegetation.”
- All 23 members of the Clean Air Scientific Advisory Committee recommended a form “substantially different from the primary ozone standard.” (Henderson, 2007)
- EPA staff paper recommended that the secondary standard “should be defined” in terms of a “cumulative seasonal form.”
- The USDA Agricultural Air Quality Task Force recognized that “[o]f particular concern are the chronic effects [on plants].”

The Administrator must decide how best to set the secondary standard and a seasonal form is the most legally defensible. By definition, the primary and secondary standards are separate legal actions based on separate criteria. There is no presumption that the secondary standard should be the same as the primary standard. EPA has extensive record support for a seasonal form and lacks scientific support for an 8 hour form.

The Administrator proposes to establish a secondary standard with a seasonal form and at a level generally less stringent than the primary standard. This choice is generally not expected to require additional controls beyond those required by the primary standard.

We are seeking legislative amendments to modernize both the primary and secondary NAAQS programs.