

## **Chapter 8: Statutory and Executive Order Impact Analyses**

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### **Synopsis**

This chapter summarizes the Statutory and Executive Order (EO) impact analyses relevant for the ozone NAAQS RIA. In general, because this RIA analyzes an illustrative attainment strategy to meet the revised NAAQS, and because States will ultimately implement the new NAAQS, the Statutory and Executive Orders below did not require additional analysis. For each EO and Statutory requirement we describe both the requirements and the way in which the RIA addresses these requirements. Further analyses of the NAAQS proposal and its impact on these statutory and executive orders are found in section VII of the NAAQS preamble.

### **8.1 Executive Order 12866: Regulatory Planning and Review**

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), the ozone NAAQS action is an “economically significant regulatory action” because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, EPA prepared this regulatory impact analysis (RIA) of the potential costs and benefits associated with this action. The RIA estimates the costs and monetized human health benefits of attaining three alternative ozone NAAQS nationwide. Specifically, the RIA examines the alternatives of 0.079 0.075 ppm, 0.070 ppm, and 0.065 ppm. The RIA contains illustrative analyses that consider a limited number of emissions control scenarios that States and Regional Planning Organizations might implement to achieve these alternative ozone NAAQS. However, the Clean Air Act (CAA) and judicial decisions make clear that the economic and technical feasibility of attaining ambient standards are not to be considered in setting or revising NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, although an RIA has been prepared, the results of the RIA have not been considered in issuing this rule.

### **8.2 Paperwork Reduction Act**

This RIA does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. There are no information collection requirements directly associated with revisions to a NAAQS under section 109 of the CAA.

Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor information collection, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### **8.3 Regulatory Flexibility Act**

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this RIA. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that is a small industrial entity as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. This rule establishes national standards for allowable concentrations of ozone in ambient air, as required by section 109 of the CAA. See also *ATA I* at 1044-45 (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities).

### **8.4 Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no new

expenditure or enforceable duty on any State, local or Tribal governments or the private sector, and EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Furthermore, as indicated previously, in setting a NAAQS, EPA cannot consider the economic or technological feasibility of attaining ambient air quality standards, although such factors may be considered to a degree in the development of State plans to implement the standards. See also *ATA I* at 1043 (noting that because EPA is precluded from considering costs of implementation in establishing NAAQS, preparation of a Regulatory Impact Analysis pursuant to the Unfunded Mandates Reform Act would not furnish any information which the court could consider in reviewing the NAAQS). Accordingly, EPA has determined that the provisions of sections 202, 203, and 205 of the UMRA do not apply to this final decision. The EPA acknowledges, however, that any corresponding revisions to associated SIP requirements and air quality surveillance requirements, 40 CFR part 51 and 40 CFR part 58, respectively, might result in such effects. Accordingly, EPA has addressed unfunded mandates in the notice that announces the revisions to 40 CFR part 58, and will, as appropriate, address unfunded mandates when it proposes any revisions to 40 CFR part 51.

### **8.5 Executive Order 13132: Federalism**

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

At the time of the proposal, EPA concluded that the proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

### **8.6 Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule concerns the establishment of ozone NAAQS. The Tribal Authority Rule gives Tribes the opportunity to develop and implement CAA programs such as the ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

This rule does not have Tribal implications, as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since Tribes are not obligated to adopt or implement any NAAQS. Thus, Executive Order 13175 does not apply to this rule..

## **8.7 Executive Order 13045: Protection of Children from Environmental Health & Safety Risks**

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is subject to Executive Order 13045 because it is an economically significant regulatory action as defined by Executive Order 12866, and we believe that the environmental health risk addressed by this action may have a disproportionate effect on children.

The NAAQS constitute uniform, national standards for ozone pollution; these standards are designed to protect public health with an adequate margin of safety, as required by CAA section 109. However, the protection offered by these standards may be especially important for children because children, along with other sensitive population subgroups such as the elderly and people with existing heart or lung disease, are potentially susceptible to health effects resulting from ozone exposure. Because children are considered a potentially susceptible population, we have carefully evaluated the environmental health effects of exposure to ozone pollution to this sub-population. These effects and the size of the population affected are summarized in section 8.7 of the Criteria Document and section 3.6 of the Staff Paper, and the results of our evaluation of the effects of ozone pollution on children are discussed in sections II.A-C of the NAAQS proposal preamble.

## **8.8 Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use**

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as “significant energy actions.” Section 4(b) of Executive Order 13211 defines “significant energy actions” as “any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy

action.” OMB has designated this rulemaking as a significant energy action. We have prepared a Statement of Energy Effects for this action as follows.

Application of the modeled illustrative control strategy containing only known controls shown Chapter 5 of this RIA leads to an estimated decrease nationwide in 2020 in coal production of less than 0.2 percent, an estimated decrease in crude oil production of about 0.1 percent, an estimated decrease in natural gas production of less than 0.1 percent, and an estimated increase in electricity production of less than 0.1 percent. Estimates of price changes for these energy products are of the same magnitude nationwide in 2020 as the estimates of output changes. For more details on how energy impacts are modeled in this analysis and the caveats and limitations that should be understood in interpreting these impacts, please refer to Appendix 5B of this RIA. For the electricity generating sector, installation of approximately 9.4 gigawatts (GWs) of SCR and 2.4 GWs of SNCR are projected in 2020 as a result of applying the illustrative EGU control strategy mentioned earlier in this RIA. There are very small changes expected in the mix of electricity generation (i.e., the number of coal-fired EGUs compared to the number of natural gas-fired and oil-fired EGUs) as a response to the illustrative EGU control strategy. Hydro, nuclear, other, and renewable based generation are projected to remain the same. Projected retirements of both coal and oil/gas units remained the same after applying the illustrative EGU control strategy. For more details on the energy impacts estimated for EGUs, please refer to Chapter 5 of this RIA and its appendix.

We provide the energy impact results reflecting only the modeled illustrative control strategy because these results have a greater degree of certainty associated with them when compared to results associated with the other alternate primary ozone standards analyzed. This greater degree of certainty is due to the application of photochemical air quality modeling (i.e., CMAQ) to assess where precursor emission reductions are most needed to attain a particular alternate primary ozone standard. Since such CMAQ modeling was not applied for these other alternate primary ozone standards, we thus have a differing degree of certainty with regards to impacts associated with the modeled illustrative control strategy as opposed to other strategies applied for the other alternate primary ozone standards. Other caveats associated with our illustrative control strategies and results from applying them are explained in Chapter 3 of this RIA. Finally, the energy impacts reported in this RIA do not incorporate the extrapolated costs estimated for Chapter 5 of this RIA. The proportion of the engineering costs that are extrapolated can also be found in that RIA chapter.

## **8.9 National Technology Transfer Advancement Act**

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104-113, §12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Since EPA is not changing any of the monitoring requirements as part of this proposal, there are no impacts associated with the NTTAA.

## **8.10 Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance, agencies are to assess whether minority or low-income populations face a risk or a rate of exposure to hazards that are significant and that “appreciably exceeds or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group” (EPA, 1998).

In accordance with Executive Order 12898, the Agency has considered whether these decisions may have disproportionate negative impacts on minority or low-income populations. This rule establishes uniform, national ambient air quality standards for ozone, and is not expected to have disproportionate negative impacts on minority or low income populations. In this NAAQS proposal, the Administrator considered the available information regarding health effects among vulnerable and susceptible populations, such as those with preexisting conditions. Thus it remains EPA’s conclusion that this rule is not expected to have disproportionate negative impacts on minority or low income populations.