

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

**[EPA-HQ-OAR-2003-0090; FRL- ]**

**RIN 2060-AN90**

**Final Extension of the Deferred Effective Date for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** The EPA is finalizing the extension of the deferred effective date of air quality designations for 14 areas of the country that have entered into Early Action Compacts. Early Action Compact areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. On April 30, 2004, EPA published an action designating all areas of the country for the 8-hour ozone National Ambient Air Quality Standards (NAAQS). In the designation rule, EPA deferred the effective date of the nonattainment designation for 14 areas that had entered into Early Action Compacts until September 30, 2005. On August 29, 2005, EPA deferred the nonattainment designation for these areas a second time until December 31, 2006. The EPA is now extending the deferred effective date of the nonattainment designation for 13 Early Action Compact areas until April 15, 2008, and for the Denver Early Action Compact area until July 1, 2007.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID no. EPA-HQ-OAR-2003-0090. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., Northwest, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566-1742. In addition, we have placed a copy of the rule and a variety of materials relevant to Early Action Compact areas on EPA's website at <http://www.epa.gov/ttn/naaqs/ozone/eac/>.

**NOTE:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's Federal Register notice at 71 FR 38147 (July 5, 2006) or the EPA website at [www.epa.gov/epahome/dockets.htm](http://www.epa.gov/epahome/dockets.htm) for current information on docket status, locations and telephone numbers.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Driscoll, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code

C539-04, Research Triangle Park, NC 27711, phone number (919) 541-1051 or by e-mail at: [driscoll.barbara@epa.gov](mailto:driscoll.barbara@epa.gov) or Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304-05, Research Triangle Park, NC 27711, phone number (919) 541-5565 or by e-mail at: [cole.david@epa.gov](mailto:cole.david@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### **A. Does this Action Apply to Me?**

This action applies only to the 14 areas that entered into Early Action compacts and for which the effective date of the nonattainment designation was deferred. A list of these areas is included in Table 1.

The information presented in this preamble is organized as follows:

#### **Outline**

### **I. General Information**

#### **A. Does this Action Apply to Me?**

### **II. What is the purpose of this document?**

### **III. What action has EPA taken to date for Early Action Compact Areas?**

#### **A. What progress are compact areas making toward completing their milestones?**

#### **B. What is this final action for compact areas?**

#### **C. What is EPA's schedule for taking further action to further defer the effective date of nonattainment designation for compact areas?**

#### **D. What comments did EPA receive on the August 3, 2006 proposal to extend the deferral of the effective date of the nonattainment designations for 14 Early Action Compact areas?**

### **IV. Statutory and Executive Order Reviews**

#### **A. Executive Order 12866: Regulatory Planning and Review**

#### **B. Paperwork Reduction Act**

#### **C. Regulatory Flexibility Act**

#### **D. Unfunded Mandates Reform Act**

#### **E. Executive Order 13132: Federalism**

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

- G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act
- L. Petitions for Judicial Review

## **II. What is the Purpose of this Document?**

The purpose of this document is to finalize the extension of the deferred effective date of the 8-hour ozone nonattainment designations for 14 participants in Early Action Compacts. The new effective designation date for 13 areas is April 15, 2008. The effective date of designation for the Denver EAC area is extended until July 1, 2007.

## **III. What Action has EPA Taken to Date for Early Action Compact Areas?**

This section discusses EPA's actions to date with respect to deferring the effective date of nonattainment designations for certain areas of the country that are participating in the Early Action Compact program. The EPA's April 30, 2004 air quality designation rule (69 FR 23858) provides a description of the compact approach, the requirements for areas participating in the program and the impacts of the program on those areas.

On December 31, 2002, we entered into compacts with 33 communities. To receive the first deferral, these Early Action Compact areas agreed to reduce ground-level ozone pollution earlier than the CAA would require. On December 16, 2003 (68 FR 70108), we published a proposed rule to defer until September 30, 2005, the effective date of designation for Early Action Compact areas that did not meet the 8-hour ozone NAAQS. Fourteen of the 33 compact areas did not meet the 8-hour ozone NAAQS.

The final designation rule published April 30, 2004 (69 FR 23858), as amended June 18, 2004 (69 FR 34080), included the following actions for compact areas: deferred the effective date of nonattainment designation for 14 compact areas until September 30, 2005; detailed the progress compact areas had made toward completing their milestones; described the actions required for compact areas in order to remain eligible for a deferred effective date for a nonattainment designation; detailed EPA's schedule for taking further action to determine whether to further defer the effective date of nonattainment designations; and described the consequences for compact areas that do not meet a milestone. In the April 2004, action, we also discussed three compact areas which did not meet the March 31, 2004, milestone; Knoxville, Memphis, and Chattanooga, Tennessee. Knoxville and Memphis were designated nonattainment effective June 15, 2004. Chattanooga was later determined to have met the March 31, 2004, milestone, and we deferred the designation date until September 30, 2005, (69 FR 34080). This brought the number of participating compact areas to 31. Since then 2 additional areas, Haywood and Putnam Counties, Tennessee have withdrawn from the program leaving the participating number of compact areas at 29.

On August 29, 2005, we published a final rule extending the deferred effective date of designation from September 30, 2005, to December 31, 2006, for the same 14 compact areas. In order to receive the second deferral, Early Action Compact areas needed to submit a State Implementation Plan with locally adopted measures by December 31, 2004. The EPA approved the SIP revisions as meeting the EAC Protocol and EPA's EAC regulations at 40 CFR 81.300, and these approvals were the basis for extending the deferred effective date until December 31, 2006. Information on local

measures, SIP submittals and background on the Early Action Compact program may be found on EPA's website at://www.epa.gov/ttn/naaqs/ozone/eac/.

A. What progress are compact areas making toward completing their milestones?

In general, the remaining 29 compact areas have made satisfactory progress toward timely completion of their milestones. All compact areas were required to submit two progress reports, one by December 30, 2005, and the other by June 30, 2006. In these progress reports, the States provided information on progress towards implementing local control measures that were incorporated in their SIPs. Each of the EAC areas submitted the required progress reports and these reports are available at <http://www.epa.gov/ttn/naaqs/ozone/eac/>.

After review by EPA, all the EAC areas were found to be in compliance with the requirements of the EAC Protocol and the individual State Implementation Plans, however, issues were noted by the State of Colorado with the Denver area regarding emissions from oil and gas exploration and production condensate tanks. Based on a report and action plan submitted by the State of Colorado to EPA, dated June 2, 2006, the State provided information that indicated volatile organic compound (VOC) emissions from oil and gas operations within the Denver EAC area were higher than had been estimated in the attainment demonstration modeling. Subsequent to this June 2, 2006 report, the State of Colorado has embarked on rulemaking activities to amend Colorado's Regulation No. 7 (the State's regulation for the control of VOCs) to require additional emission reductions from oil and gas exploration and production condensate tanks to achieve the level of reductions the State relied on in the EPA-approved modeled

attainment demonstration. Further discussion on this issue is provided below in section D (response to comments).

**B. What is this final action for compact areas?**

We are extending the deferred effective date of the nonattainment designation for 14 compact areas. In consideration of the progress reported by the EAC areas, we have concluded that 13 of the 14 areas are eligible for a final deferral of their nonattainment designation for the 8-hour ozone NAAQS to April 15, 2008. See 40 CFR 81.300(e)(4)(ii). Therefore, we are further extending until April 15, 2008 the effective date of the 8-hour ozone nonattainment designation for the compact area counties listed in Table 1 below, with the exception of the Denver EAC area, which is extended only to July 1, 2007. We are revising 40 CFR part 81 to reflect these extensions.

**Table 1. Compact Areas Which Qualify for a Deferred Effective Date of April 15, 2008<sup>1</sup>**

**NOTE:** Name of designated 8-hour ozone nonattainment area is in parentheses.

State	Compact Area (Designated Area)	Counties with designation deferred to April 15, 2008	Counties which are part of compacts and are designated unclassifiable/ Attainment
<b>EPA Region 3</b>			
VA	<b>Northern Shenandoah Valley Region</b> (Frederick County, VA), adjacent to Washington, DC-MD-VA	Winchester City	
		Frederick County	
VA	<b>Roanoke Area</b> (Roanoke, VA)	Roanoke County	
		Botetourt County	
		Roanoke City	
		Salem City	
MD	<b>Washington County</b> (Washington County (Hagerstown, MD), adjacent to Washington, DC-MD-VA	Washington County	

<sup>1</sup> Effective date of nonattainment designation for Denver EAC is extended to July 1, 2007.

WV	<b>The Eastern Pan Handle Region</b> (Berkeley & Jefferson Counties, WV), Martinsburg area	Berkeley County	
		Jefferson County	
<b>EPA Region 4</b>			
NC	<b>Unifour</b> (Hickory-Morganton-Lenoir, NC)	Catawba County	
		Alexander County	
		Burke County (part)	
		Caldwell County (part)	
NC	<b>Triad</b> (Greensboro-Winston-Salem-High Point, NC)	Randolph County	Surry County
		Forsyth County	Yadkin County
		Davie County	Stokes County
		Alamance County	
		Caswell County	
		Davidson County	
		Guilford County	
		Rockingham County	
NC	<b>Cumberland County</b> (Fayetteville, NC)	Cumberland County	
SC	<b>Appalachian - A</b> (Greenville-Spartanburg-Anderson, SC)	Spartanburg County	Cherokee County
		Greenville County	Pickens County
		Anderson County	Oconee County
SC	<b>Central Midlands - I</b> Columbia area	Richland County (part)	Newberry County
		Lexington County (part)	Fairfield County
TN/ GA	<b>Chattanooga</b> (Chattanooga, TN-GA)	Hamilton County, TN	Marion County, TN
		Meigs County, TN	Walker County, GA
		Catoosa County, GA	
TN	<b>Nashville</b> (Nashville, TN)	Davidson County	Robertson County
		Rutherford County	Cheatham County
		Williamson County	Dickson County
		Wilson County	
		Sumner County	
TN	<b>Johnson City-Kingsport-Bristol Area</b> (TN portion only)	Sullivan Co, TN	Washington Co, TN
		Hawkins County, TN	Unicoi County, TN
			Carter County, TN
			Johnson County, TN
<b>EPA Region 6</b>			
TX	<b>San Antonio</b>	Bexar County	Wilson County
		Comal County	
		Guadalupe County	
<b>EPA Region 8</b>			
CO	<b>Denver</b> <sup>1</sup> (Denver-Boulder-Greeley-Ft. Collins-Love, CO)	Denver County	
		Boulder County (includes part of Rocky Mtn Nat.Park)	
		Jefferson County	
		Douglas County	



	Broomfield	
	Adams County	
	Arapahoe County	
	Larimer County (part)	
	Weld County (part)	

C. What is EPA’s schedule for taking further action to further defer the effective date of nonattainment designation for compact areas?

The EAC areas have one remaining milestone which is to demonstrate attainment with the 8-hour ozone NAAQS by December 31, 2007. No later than April 15, 2008, we will determine whether the compact areas that received a deferred effective date of April 15, 2008, have attained the 8-hour ozone NAAQS by December 31, 2007, and have met all compact milestones. If the area has not attained the standard, the nonattainment designation will take effect. If the compact area has attained the standard, EPA will designate the area as attainment. Any compact area that has not attained the NAAQS and thus has an effective nonattainment designation will be subject to the full planning requirements of title I, part D of the CAA, and the area will be required to submit a revised attainment demonstration SIP within 1 year of the effective date of designation. As provided above, the State of Colorado is undertaking rulemaking to address shortfalls in VOC emission reductions for the Denver EAC. These rulemaking activities are designed to achieve greater VOC emission reductions from the oil and gas industry and we also note, the rule revisions contain a compliance date of May 1, 2007, which is just before the beginning of the Colorado high ozone season. Once the State’s rulemaking actions are complete, the rule revisions will be submitted to EPA for our approval.

D. What comments did EPA receive on the August 3, 2006 proposal to extend the deferral of the effective date of the nonattainment designations for 14 Early Action Compact areas?

We received six comments on the proposed rule to extend the deferred effective date of the nonattainment designations for 14 Early Action Compact areas to April 15, 2008. We have responded to the comments in this section.

Comment: Two commenters expressed support for the compact process, the goal of clean air sooner, the incentives and flexibility the program provides for encouraging early reductions of ozone-forming pollution, and the deferred effective date of nonattainment designation. However, a number of commenters opposed the Early Action Compact program. Several of these commenters expressed concern about various legal aspects of the program, primarily the deferral of the effective date of the nonattainment designation for these areas. Although some of these commenters were supportive of the goal of proactively addressing the public health concerns associated with ozone pollution, the commenters state that the program is not authorized by the CAA. All of these commenters indicated that EPA lacks authority under the CAA to defer the effective date of a nonattainment designation. In addition, these commenters state that EPA lacks authority to enter into Early Action Compacts with areas and lacks authority to allow areas to be relieved of obligations under title I, part D of the CAA while these areas are violating the 8-hour ozone standard or are designated nonattainment for that standard.

Response: We have determined that the compact program, as designed, gives local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard. The participating communities are serious in their commitment and have made good progress implementing State and local measures for controlling emissions from local

sources earlier than the CAA would otherwise require. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizens groups, a number of these communities are, for the first time, cooperating on a regional basis to solve environmental problems that affect the health and welfare of their citizens. People living in these areas realize reductions in pollution levels sooner and will enjoy the health benefits of cleaner air sooner than might otherwise occur. With respect to the commenter who attached comments that were submitted on EPA's initial proposal to defer the effective date of a nonattainment designation of EAC areas meeting compact milestones, we refer back to our response to those comments in the April 2004 designation rule (69 FR 23858).

Comment: Three commenters expressed specific concerns about deferring the effective date of the nonattainment designation for the Denver metropolitan EAC area. The commenters noted that the Denver EAC area does not comply with its commitments to address ozone-forming pollution from the oil and gas sector. Two of these commenters stated that emissions from these operations are higher than the State originally projected; however, they acknowledged that Colorado is currently taking steps to revise control requirements for these operations to address the problem. Commenters believed that it was inappropriate for EPA to proceed at this time with granting the Denver EAC area a final deferred nonattainment effective date to April 15, 2008, while the necessary revisions to Regulation No. 7, the State of Colorado's regulation for the control of VOCs which are designed to require additional VOC emission reductions from oil and gas condensate tanks would still be under consideration by both the Colorado Air Quality Control Commission (AQCC) and State Legislature. In addition, the commenters noted that air quality

monitoring data for the 2006 ozone season indicate that the area may not be complying with the 8-hour ozone standard through 2007.

Response: The commenters were concerned with increased VOC emissions from oil and gas exploration and production condensate tanks. Based on a report and action plan submitted by the State of Colorado to EPA, dated June 2, 2006, the State provided information that indicated VOC emissions from oil and gas operations within the Denver EAC area were higher than had been relied on in the attainment demonstration modeling. With rule revisions being proposed before the Colorado AQCC on August 17, 2006, the State of Colorado has initiated public rulemaking activities to amend Colorado's Regulation No. 7 to require additional emission reductions from oil and gas exploration and production condensate tanks to achieve the level of reductions relied on in the EPA-approved modeled attainment demonstration. However, by State rulemaking procedures, the Regulation No. 7 revisions will not be considered for adoption by the AQCC until November 16 or 17, 2006, and by Colorado State law, the Regulation No. 7 revisions will then have to be considered for adoption by the Colorado State Legislature which will only be in session between January 1, 2007 to the first week of May, 2007. This presents a potential dilemma for EPA, as we currently consider granting the Denver EAC area a final deferred nonattainment effective date to April 15, 2008, in that the necessary revisions to Regulation No. 7, that are designed to require additional VOC emission reductions from oil and gas condensate tanks, would still be under consideration by both the AQCC and State Legislature.

The EPA agrees with the commenters concern regarding the timing of a final deferral of the Denver EAC's nonattainment effective date and potential conflict with the State's fall 2006 and spring 2007 State Implementation Plan (SIP) rulemaking process time

frame. However, we also believe that beginning the rulemaking process to address the shortfall in reductions, the area has demonstrated its commitment to ensuring the terms of the EAC process will be met. Therefore, to accommodate the public rulemaking activities of the Colorado AQCC and Colorado State Legislature and to allow the Denver area to remain in the EAC program, with this final rule EPA is granting the Denver area a deferred effective date of nonattainment only to July 1, 2007. Following the rulemaking actions by the Colorado AQCC and Colorado State Legislature, EPA anticipates that it will undertake further rulemaking action for the Denver EAC to determine whether to extend the deferred nonattainment effective date beyond July 1, 2007. A likely schedule for EPA's subsequent rulemaking action is:

- March 1, 2007; EPA proposes whether to extend the final deferred effective date for the Denver EAC to April 15, 2008. This proposed rule would reflect the actions taken by the Colorado AQCC and then current actions by the Colorado State Legislature. This proposal would open a 30-day public comment period.

- April 1, 2007; the 30-day public comment period closes.

- April, 2007; EPA evaluates all public comments.

- May 1, 2007; EPA prepares a final rule and starts its internal concurrence process.

- On or about May 25, 2007; Signature on the final rule by the Administrator.

- June 1, 2007; Publication in the Federal Register of the final rule and that rule will have a 30-day effective date.

The above schedule would allow both the Colorado AQCC and Colorado State Legislature until late April to complete their respective functions and also allow EPA

appropriate time to complete a final deferral of the Denver EAC nonattainment effective date to April 15, 2008, if EPA determines that is the appropriate action to take.

With respect to the commenters' concerns regarding the ambient air quality monitoring data for the Denver EAC area, EPA agrees that several exceedances of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) were observed in 2006. However, even with these exceedances none of the ambient air quality monitors in the 8-hour ozone monitoring network recorded a violation of the 8-hour ozone NAAQS. Further, we note that the ambient air quality monitors for the Denver EAC area have shown attainment of the 8-hour ozone NAAQS for the periods, 2002 through 2004, 2003 through 2005, and 2004 through 2006. Although Denver has not violated the standard for the past three 3-year periods, EPA notes that air quality in the area remains very close to the standard, indicating that the additional emission reductions being considered now by the State are important to ensure that air quality in the area remains below the level of the standard. EPA notes and appreciates commenters' concerns for the potential for a violation of the 8-hour ozone NAAQS during the upcoming ozone season of 2007.

#### **IV. Statutory and Executive Order Reviews**

This action finalizes the extension of the deferred effective date of the nonattainment designation for 13 compact areas until April 15, 2008. This action also finalizes the extension of the deferred effective date of the nonattainment designation for the Denver compact area until July 1, 2007.

##### **A. Executive Order 12866: Regulatory Planning and Review**

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

#### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This final rule does not require the collection of any information.

Burden means 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, 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.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking

requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) a small business that is a small industrial entity as defined in 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 this final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Rather, this rule would extend the deferred effective date of the nonattainment designation for areas that implement control measures and achieve emissions reductions earlier than otherwise required by the CAA in order to attain the 8-hour ozone NAAQS.

#### D. 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.

The EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. In this final rule, EPA is deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us. Thus, this final rulemaking is not subject to the requirements of sections 202 and 205 of the UMRA.

#### E. 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.”

This final rule does not have federalism implications. It will 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. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This final rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this proposed rule.

#### F. 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 final 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 no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045: “Protection of Children From Environmental Health 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 disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) 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 VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This final rule does not involve technical standards. Therefore, EPA is not considering the use of any VCS. The EPA will encourage States that have compact areas to consider the use of such standards, where appropriate, in the development of their SIPs.

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

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that this final rule should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety.

#### K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].** Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA Section 307(b)(2).

**LIST OF SUBJECTS in 40 CFR Part 81**

Environmental protection, Air pollution control

AUTHORITY: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501-7511f; 42 U.S.C.

7601(a)(1).

---

Dated:

---

Stephen L. Johnson,  
Administrator

40 CFR Part 81 is amended as follows:

**PART 81 - [Amended]**

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

**Subpart C - Section 107 Attainment Status Designations**

2. Section 81.300 is amended by revising paragraphs (e)(3)(i) and (e)(3)(ii)(B) and (C) to read as follows:

**§81.300 Scope.**

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) *General.* With the exception of the Denver area subject to a compact and notwithstanding clauses (i) through (iv) of section 107(d)(1)(B) of the Clean Air Act (42 U.S.C. 7407(d)(1)(B)), the Administrator shall defer until April 15, 2008 the effective date of a nonattainment designation of any area subject to a compact that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the 8-hour ozone national ambient air quality standard if the Administrator determines that the area subject to a compact has met the requirements in paragraphs (e)(2)(i) through (iii) of this section. The Administrator shall defer until July 1, 2007 the effective date of a nonattainment designation of the Denver area.

(ii) \* \* \*

(B) Prior to expiration of the deferred effective date on April 15, 2008, if the Administrator determines that an area or the State subject to a compact has not met either requirement in paragraphs (e)(2)(iv) and (v) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

(C) If the Administrator determines that an area subject to a compact and/or State has not met any requirement in paragraphs (e)(2)(iv) through (vi) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

\* \* \* \* \*

3. In §81.306, the table entitled “Colorado-Ozone (8-Hour Standard)” is amended by revising footnote 2 to read as follows:

**§81.306 Colorado.**

\* \* \* \* \*

**Colorado-Ozone (8-Hour Standard)**

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until July 1, 2007.

\* \* \* \* \*

4. In §81.311, the table entitled “Georgia-Ozone (8-Hour Standard)” is amended by revising footnote 2 to read as follows:



**§81.311 Georgia.**

**\* \* \* \* \* Georgia-Ozone (8-Hour Standard)**

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until April 15, 2008.

\* \* \* \* \*

5. In §81.321, the table entitled “Maryland-Ozone (8-Hour Standard)” is amended by revising footnote 2 to read as follows:

**§81.321 Maryland.**

\* \* \* \* \*

**Maryland-Ozone (8-Hour Standard)**

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until April 15, 2008.

\* \* \* \* \*

6. In §81.334, the table entitled “North Carolina-Ozone (8-Hour Standard)” is amended by revising footnote 2 to read as follows:

**§81.334 North Carolina.**

\* \* \* \* \*

**North Carolina-Ozone (8-Hour Standard)**

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until April 15, 2008.

\* \* \* \* \*

7. In §81.341, the table entitled “South Carolina-Ozone (8-Hour Standard)” is amended by revising footnote 2 to read as follows:

**§81.341 South Carolina.**

\* \* \* \* \*

**South Carolina-Ozone (8-Hour Standard)**

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until April 15, 2008.

\* \* \* \* \*

8. In §81.343, the table entitled “Tennessee-Ozone (8-Hour Standard)” is amended by revising footnote 2 to read as follows:

**§81.343 Tennessee.**

\* \* \* \* \*

**Tennessee-Ozone (8-Hour Standard)**

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until April 15, 2008.

\* \* \* \* \*

9. In §81.344, the table entitled “Texas-Ozone (8-Hour Standard)” is amended by revising footnote 2 to read as follows:

**§81.344 Texas.**

\* \* \* \* \*

**Texas-Ozone (8-Hour Standard)**

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until April 15, 2008.

\* \* \* \* \*

10. In §81.347, the table entitled “Virginia-Ozone (8-Hour Standard)” is amended by revising footnote 2 to read as follows:

**§81.347 Virginia.**

\* \* \* \* \*

**Virginia-Ozone (8-Hour Standard)**

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until April 15, 2008.

\* \* \* \* \*

11. In §81.349, the table entitled “West Virginia-Ozone (8-Hour Standard)” is amended by revising footnote 2 to read as follows:

**§81.349 West Virginia.**

\* \* \* \* \*

**West Virginia-Ozone (8-Hour Standard)**

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until April 15, 2008.

\* \* \* \* \*