

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-7599-7]

RIN 2060-AL85

Deferral of Effective Date of Nonattainment Designations for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA is proposing to defer the effective date of air quality designations for certain areas of the country that do not meet the 8-hour ozone national ambient air quality standard (NAAQS). Early Action Compact (compact) areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. By April 15, 2004, EPA will designate all areas for the 8-hour ozone NAAQS. The EPA is proposing that, when it promulgates the designations in April 2004, EPA will issue the first of three deferrals of the effective date of the designation for any compact area that is designated nonattainment and continues to meet all compact milestones. In this proposal, EPA is proposing to defer until September 30, 2005, the effective date of the 8-hour ozone nonattainment designation for specific areas.

The EPA believes this program provides an incentive for early planning, early implementation, and early reductions of emissions leading to expeditious attainment and maintenance of the 8-hour ozone standard. In addition, these compact agreements give local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the communities control emissions from local sources earlier than the CAA would otherwise require. People living in areas that realize reductions sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur.

This proposed rule does not propose to establish attainment/nonattainment designations, nor does it address the principles that will be considered in the designation process.

DATES: Comments must be received on or before January 15, 2004. The EPA does not intend to grant a request to extend the comment period due to the need to complete the designations process by April 2004. If EPA receives

comments after the close of the comment period, we will make every effort to review them.

ADDRESSES: All comments should be submitted to Docket Number OAR 2003-0090 and a copy to David Cole, EPA. Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in unit I.A. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5565 or by e-mail at: cole.david@epa.gov or Ms. Valerie Broadwell, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-3310 or by e-mail at: broadwell.valerie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID Number OAR 2003-0090. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 Air and Radiation Docket is (202) 566-1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA

Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute and which, therefore, is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in unit I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure

that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR-2003-0090. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *A-and-R-Docket@epa.gov*, Attention Docket ID No. OAR-2003-0090. In addition, please send a copy of e-mail comments to *cole.david@epa.gov*. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. The E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the

comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in unit I.B.2 below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR 2003-0090. In addition, please send a copy of your comments to: David Cole, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code: C539-02, Research Triangle Park, NC 27711.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20004, Attention Docket ID No. OAR 2003-0090. Such deliveries are only accepted during the Docket's normal hours of operation as identified in unit I.A.1. Please also deliver a copy of your comments to: David Cole, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709.

4. *By Facsimile.* Fax your comments to: 202-566-1741, Attention Docket ID No. OAR 2003-0090; and to: 919-541-0824, Attention: David Cole.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided

the name, date, and **Federal Register** citation related to your comments.

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 - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
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II. What Are the Health Concerns Addressed by the 8-Hour Ozone Standard?

Ground-level ozone pollution is formed by the reaction of volatile organic compounds (VOC) and nitrogen oxides (NO_x) in the atmosphere in the presence of sunlight. These two pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, including on-road and off-road motor vehicles and engines, power plants and industrial facilities, and smaller "area" sources.

In 1979, we promulgated the 0.12 ppm (parts per million) 1-hour ozone standard, (44 FR 8202, February 8, 1979). On July 18, 1997, we promulgated a revised standard of 0.08 ppm, measured over an 8-hour period, *i.e.*, the 8-hour standard (62 FR 38856). In general, the 8-hour standard is more protective of public health and more stringent than the 1-hour standard, and there are more areas that do not meet the 8-hour standard than there are areas that do not meet the 1-hour standard.

Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are particularly susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone.

More detailed information on health effects of ozone can be found at the following web site: http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.

III. What Is the Background on Implementation of the 8-hour Ozone Standard?

This action proposes an option that provides incentives for certain areas taking voluntary, early actions for reducing ozone for implementing the 8-hour ozone NAAQS. The option was discussed in EPA's June 2, 2003 proposed rulemaking (68 FR 32859) for implementing that standard. This section presents background information on the June 2, 2003 proposal.

On July 18, 1997, we revised the ozone NAAQS (62 FR 38856) by promulgating an ozone standard of .08 ppm as measured over an 8-hour period. At that time, we indicated that we believed that the 8-hour ozone NAAQS should be implemented under the less detailed requirements of subpart 1 of part D of title I of the CAA rather than the more detailed requirements of

subpart 2. Various industry groups and States challenged EPA's final rule promulgating the 8-hour ozone NAAQS in the U.S. Court of Appeals for the District of Columbia Circuit.¹ In May 1999, the Court of Appeals remanded the ozone standard to EPA on the basis that our interpretation of our authority under the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. *American Trucking Assns., Inc., v. EPA*, 175 F.3d 1027, 1034–1040 (ATA I) *aff'd*, 195 F.3d 4 (D.C. Cir., 1999)(ATA II). In addition, the Court held that the CAA clearly provided for implementation of a revised ozone standard under subpart 2, not subpart 1. *Id.* at 1048–1050.² We sought review of these two issues in the U.S. Supreme Court. In February 2001, the Supreme Court held that EPA's action in setting the NAAQS was not an unconstitutional delegation of authority. *Whitman v. American Trucking Assoc.*, 121 S.Ct. 903, 911–914 (2001) (*Whitman*). In addition, the Supreme Court held that the D.C. Circuit incorrectly determined that the CAA was clear in requiring implementation only under subpart 2, but determined that our implementation approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. *Id.* at 916–919. The Court also identified some elements of the CAA's classification scheme under subpart 2 that are “ill-fitted” to the revised standard and remanded the implementation strategy to EPA to develop a reasonable approach for implementation. *Id.* Because the D.C. Circuit had not addressed all of the issues raised in the underlying case, the court remanded the case to the D.C. Circuit for disposition of those issues. *Id.* at 919. On March 26, 2002, the D.C. Circuit rejected all remaining challenges to the ozone and fine particle (PM_{2.5}) standards. *American Trucking Assoc. v. EPA*, 283 F.3d 355 (D.C. Cir. 2002) (ATA III).

In response to the Court's remand, we proposed the 8-hour ozone implementation rule on June 2, 2003 (68 FR 32802). We plan to issue a final rule on an implementation approach in the near future.

¹ On July 18, 1997, we also promulgated a revised particulate matter (PM) standard (62 FR 38652). Litigation on the PM standard paralleled the litigation on the ozone standard and the court issued one opinion addressing both challenges. However, issues regarding implementation of the revised PM NAAQS were not litigated.

² The Court addressed a number of other issues, which are not relevant here.

IV. What Actions Is EPA Taking To Designate Areas for the 8-Hour Ozone Standard?

A. What Is EPA's Schedule for Designating Areas for the 8-Hour Ozone Standard?

Section 107(d) of the CAA establishes a deadline for EPA to promulgate designations of areas.³ We have entered into a consent decree that requires us to promulgate designations on a revised schedule.⁴ In a settlement with nine environmental groups, we agreed to designate areas for the 8-hour ozone standard by April 15, 2004. This deadline provided States and Tribes ample time to update their recommendations by July 15, 2003 for nonattainment area boundaries. On November 14, 2002, we issued a guidance memorandum outlining the new designations schedule, requirements for designating Tribal areas, and discussing the impact of the designation schedule on areas that are developing Early Action Compacts.⁵

B. What Action Is EPA Taking To Defer the Effective Date of Nonattainment Designation for Early Action Compact Areas?

At the time we designate areas in April 2004, we plan to take final action to defer the effective date of the nonattainment designation on a rolling basis for participating compact areas that are monitoring a violation of the 8-hour ozone standard, provided all terms of the agreement continue to be met, including timely completion of all compact milestones and reports. In today's rule, we are proposing to establish the first of three deferred effective dates. At the same time we designate all areas either attainment or nonattainment, we will take final action determining whether to defer until September 30, 2005, the effective date of the nonattainment designation for the 8-hour ozone standard for compact areas that are violating the standard, provided

³ Section 107(d) of the CAA sets forth a schedule for designations following the promulgation of a new or revised NAAQS. The Transportation Equity Act for the Twenty-first Century (TEA–21) revised the deadline to publish nonattainment designations for the 8-hour ozone NAAQS to provide an additional year (to July 2000), but HR 3645 (EPA's appropriation bill in 2000) restricted EPA's authority to spend money to designate areas until June 2001 or the date of the Supreme Court ruling on the standard, whichever came first.

⁴ *American Lung Association v. EPA* (D.D.C. No. 1:02CV02239).

⁵ Memorandum from Jeffrey R. Holmstead, Assistant Administrator, to EPA Regional Administrators, “Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts,” November 14, 2002. Docket No. OAR–2003–0090–0003.

these areas continue to meet all compact milestones, which are described in section V of this proposal.

Prior to the time the first deferral expires, EPA intends to take further action to propose and, as appropriate, promulgate a second deferred effective date of the nonattainment designation for those areas that continue to fulfill all compact obligations. Finally, prior to the time the second deferral expires, EPA would propose and, as appropriate, promulgate a third deferral for those areas that continue to meet all compact milestones.

V. What Is an Early Action Compact, and What Are Compact Areas Required To Do?

A. Why Was the Compact Program Developed?

As discussed in the proposed 8-hour implementation rule, State, local and Tribal air pollution control agencies have continued to express a need for added flexibility in implementing the 8-hour ozone NAAQS, including incentives for taking action sooner than the CAA requires for reducing ground-level ozone. The compact program permits local areas to make decisions that will achieve reductions in VOC and NO_x emissions sooner than otherwise is mandated by the CAA. Early planning and early implementation of control measures that improves air quality will likely accelerate protection of public health. We issued our policy on early planning on November 14, 2002, as described in section IV of this action.

B. What Early Action Protocol Did Texas Submit to EPA?

In March 2002, the Texas Commission on Environmental Quality (TCEQ) encouraged EPA to consider incentives for early planning towards achieving the 8-hour ozone NAAQS. The TCEQ submitted to EPA the Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-hour Ozone Standard (Protocol). The Protocol was designed to achieve NO_x and VOC emissions reductions for the 8-hour ozone NAAQS sooner than would otherwise be required under the CAA. The TCEQ recommended that the Protocol be formalized by "Early Action Compact" agreements primarily developed by local, State and Federal (EPA) officials. The principles of the compacts, as described in the Protocol, are the following:

1. Early planning, implementation, and emissions reductions leading to expeditious attainment and maintenance of the 8-hour ozone standard;

2. Local control of the measures employed, with broad-based public input;

3. State support to ensure technical integrity of the early action plan;

4. Formal incorporation of the early action plan into the State implementation plan (SIP);

5. Designation of all areas as attainment or nonattainment in April 2004, but, for compact areas, deferral of the effective date of the nonattainment designation and/or designation requirements so long as all compact terms and milestones continue to be met; and

6. Safeguards to return areas to traditional SIP attainment requirements should compact terms be unfulfilled (e.g., if the area fails to attain in 2007), with appropriate credit given for reduction measures already implemented.

In a letter dated June 19, 2002, from Gregg Cooke, Administrator, Region 6, to Robert Huston, Chairman, TCEQ, EPA endorsed the principles outlined in the Protocol. The Protocol was subsequently revised on December 11, 2002, based on comments from EPA.

The Protocol specifies certain components that compacts are addressing, including the development of local air quality plans and the following elements:

1. Completion of emissions inventories and modeling (based on most recent Agency guidance) to support selection of local control measures;

2. Adoption of control strategies that demonstrate attainment and that are submitted as a revision to the SIP;

3. Completion of a component to address emissions growth at least 5 years beyond December 31, 2007, ensuring that the area will remain in attainment of the 8-hour ozone standard during that period;

4. Public involvement in all stages of planning and implementation, including public education programs and a process that ensures stakeholder involvement and public participation in planning local strategies and reviewing air quality plans; and

5. Semiannual reports detailing progress toward completion of compact milestones.

C. What Are Compact Areas Required To Do?

The Protocol and Agency guidance (EPA memorandum dated November 14, 2002, described in section IV, and EPA memorandum dated April 4, 2003⁶

⁶ Memorandum from Lydia N. Wegman, Director, Air Quality Strategies and Standards Division,

establish what compact areas are required to do. To be eligible for a compact, these areas must be attaining the 1-hour ozone standard (including maintenance areas for the 1-hour ozone standard, to the extent such areas continue to maintain that standard) and be designated attainment for that standard at the time the compact was entered into. These areas, however, may be approaching or monitoring exceedances of the 8-hour ozone standard.⁷ A compact area must be attaining the 8-hour ozone standard by December 31, 2007, based on the most recent 3 years of air quality monitoring data.

The EPA's November 14, 2002, memorandum specified that compacts must be completed, submitted to EPA and signed by local, State and EPA officials by December 31, 2002. We intend to honor the commitments established in these agreements, provided these areas meet all components of the Protocol and Agency guidance and schedules. No additional areas were allowed to enter into compacts after December 31, 2002.

The Protocol describes the process by which compact areas are required to select control strategies based on SIP-quality modeling that shows attainment of the 8-hour ozone standard no later than December 31, 2007, through implementation of control strategies. The EPA specified that all compact areas must submit a local plan by March 31, 2004 that will include measures that are specific, quantified, and permanent and that, if approved into the SIP by EPA, will be federally enforceable. The March 31, 2004 submission must also include specific implementation dates for the local controls, as well as detailed documentation supporting the selection of measures. Controls must be implemented no later than December 31, 2005, which is at least 16½ months earlier than required by the CAA. Reports are required every 6 months to describe progress toward completion of milestones. In June 2006 compact areas must submit a report to EPA that describes implementation of measures that was required by the end of December 2005, as well as an assessment of reductions in emissions and air quality.

⁷ "Early Action Compacts (EACs): The June 16, 2003 Submission and Other Clarifications," April 4, 2003. Docket No. OAR-2003-0090-0002.

⁸ One-hour ozone maintenance areas are areas that were previously designated nonattainment for the 1-hour ozone standard, but were redesignated to attainment pursuant to section 107(d)(3)(E) and subject to the requirements of section 175A of the CAA.

Table 1 describes the milestones and submissions that compact areas are required to complete in order to

continue eligibility for a deferral of the effective date of nonattainment

designation for the 8-hour ozone standard.

TABLE 1.—EARLY ACTION COMPACT MILESTONES

| Submittal date | Compact milestone |
|---|--|
| December 31, 2002 | Submit Compact for EPA signature. |
| June 16, 2003 | Submit preliminary list and description of potential local control measures under consideration. |
| March 31, 2004 | Submit complete local plan to State (includes specific, quantified and permanent control measures to be adopted). |
| December 31, 2004 | State submits adopted local measures to EPA as a SIP revision that, when approved, will be federally enforceable. |
| 2005 Ozone Season (or no later than December 31, 2005). | Implement SIP control measures. |
| June 30, 2006 | State reports on implementation of measures and assessment of air quality improvement and reductions in NO _x and VOC emissions to date. |
| December 31, 2007 | Area attains 8-hour ozone NAAQS. |

According to the Protocol, EPA would recognize the local area's commitment to early, voluntary action by designating the compact areas violating the 8-hour NAAQS as nonattainment in April 2004 (at the time of national designations for all areas), but deferring the effective

date of the nonattainment designation, so long as all terms and milestones of the Compact continue to be met. A copy of the revised Protocol is available in the docket for this proposed rulemaking.⁸

VI. What Areas Are Participating in the Early Action Compact Program?

We have entered into compacts with 33 communities. A list of these areas is presented in Table 2.

TABLE 2.—8-HOUR OZONE EARLY ACTION COMPACT AREAS

| |
|--|
| Appalachian (Greenville-Spartanburg-Anderson Area), SC. |
| Austin-San Marcos Area, TX. |
| Berkeley-Charleston-Dorchester (Charleston Area), SC. |
| Catawba (York-Chester-Lancaster-Union Counties), SC—part of Charlotte-Gastonia-Rock Hill Area. |
| Central Midlands (Columbia area), SC. |
| Chattanooga Area, TN-GA. |
| Denver Area, CO. |
| Fayetteville Area, NC. |
| Haywood County (near Memphis), TN. |
| Knoxville Area, TN. |
| Low Country (Beaufort area), SC. |
| Lower Savannah-Augusta (Augusta-Aiken area), GA-SC. |
| Memphis Area, TN-AR-MS. |
| Mountain Area of NC (Asheville area), NC. |
| Nashville Area, TN. |
| Northeast Texas Area (Longview-Marshall-Tyler Area), TX. |
| Northern Shenandoah Valley Region (Winchester/Frederick County), VA. |
| Oklahoma City Area, OK. |
| Pee Dee (Florence Area), SC. |
| Putnam County (Central TN, between Nashville and Knoxville), TN. |
| Roanoke Area, VA. |
| San Antonio Area, TX. |
| San Juan County (Farmington Area), NM. |
| Santee Lynches (Sumter Area), SC. |
| Shreveport-Bossier City Area, LA. |
| The Eastern Pan Handle Region (Martinsburg Area), WV. |
| Triad Area (Greensboro-Winston Salem-High Point), NC. |
| Tri-Cities Area (Johnson City-Kingsport-Bristol Area), TN. |
| Tulsa Area, OK. |
| Unifour Area (Hickory-Morganton-Lenoir Area), NC. |
| Upper Savannah (Abbeville-Greenwood Area), SC. |
| Waccamaw (Myrtle Beach Area), SC. |
| Washington County (West of Washington, DC), MD. |

⁸ The Texas Protocol was submitted to EPA in March 2002 for review and was revised in

December 2002 based on the Agency's comments concerning the need for additional milestones and

other clarifications. Docket No. OAR-2003-0090-0004.

A. What Progress Are Compact Areas Making Toward Completing Their Milestones?

Compact areas are continuing to make good progress toward timely completion of their milestones. All 33 communities met the June 16, 2003 milestone, which required areas to submit a list and description of local control measures each area is considering for adoption and implementation. In addition, all 33 compact areas submitted the June 30, 2003 progress report. The June 16 submissions contained many innovative measures that EPA believes have the potential to reduce air pollution, while at the same time, produce additional benefits for these communities. For example, many compact areas are considering electrified truck stops to replace the need for engine idling during truck loading or unloading. A number of other areas are considering the addition of cetane additives to fuel for increased fuel efficiency. San Antonio's list of measures includes a walking school bus program. Under this program, parents rotate the responsibility of walking groups of students to school in lieu of going by bus or by car. The Center for Disease Control reports that lack of exercise is one of the primary reasons why childhood obesity has reached epidemic proportions in the U.S. In addition to reducing vehicle miles traveled (VMT), thus decreasing mobile source emissions, a walking school bus program provides children with another opportunity to get physical exercise.

Stakeholders for the Austin, Texas compact are exploring an expedited

permitting process for "mixed use, transit-oriented, infill development." Mixing land uses can reduce VMT in several ways, including trip lengths, mode choice and vehicle ownership. In a recent study, EPA has concluded that by encouraging people to walk, bike, and use transit rather than drive, mixed-use development patterns reduce VMT, thereby decreasing automobile emissions and improving regional air quality.⁹

The EPA believes that these types of long-term, land use changes can reduce air pollution well into the future, as well as produce multiple benefits that go beyond cleaner air. Such additional effects include an increase in mobility for all segments of the population, an increase in physical activity and an improved quality of life. These are the kinds of measures that EPA would like to see more areas explore, but for which the CAA provides no real incentives. Based on the many innovative and creative measures contained in the June 16, 2003 submission, we believe that the Early Action Compact program can provide such an incentive.

B. How Will EPA Address Compact Areas Attaining the 8-Hour Ozone Standard in April 2004?

Compact areas that are not violating the 8-hour ozone standard using 2001–2003 ozone monitoring data will be designated attainment at the time we designate areas in April 2004. In most cases, compact areas that would not be in violation of the 8-hour standard when designations are made in April 2004 would have ozone design values near 85 parts per billion (ppb), and therefore,

are at risk for violating the 8-hour ozone standard in subsequent ozone seasons (e.g., 2004–2006). We encourage compact areas designated attainment for the 8-hour standard based on 2001–2003 data to continue to develop clean air plans and to remain committed to the compact program to ensure air quality remains clean. Should an area participating in the program that is designated attainment in April 2004 subsequently violate the 8-hour ozone standard during the term of the compact, EPA would not commit to redesignate the area to nonattainment for so long as the area continues to comply with the compact requirements and meet all compact milestones. The EPA would not permit any extension of the compact requirement to attain the standard by December 2007 for any compact area that violates the standard after 8-hour ozone designations in April 2004, whether the area was designated attainment or nonattainment with a deferral of the effective date of the designation.

C. What Is the Air Quality of the Compact Areas?

A total of 146 counties are covered by compacts. Sixty-four of these counties have ozone monitors and 82 counties do not. Table 3 below summarizes 2000–2002 air quality data that are available for the 146 counties participating in the program. However, in April 2004, EPA will designate areas based on 2001–2003 data; therefore, the air quality status of some compact areas may change for the purpose of designating areas for the 8-hour ozone standard.

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES

| State | Compact area | County | 2000–2002 Ozone design value, ppb ozone |
|---------------------|--|--------------------------|---|
| EPA Region 3 | | | |
| VA | Northern Shenandoah Valley Region. (This area is not a MSA.) Adjacent to Washington-Baltimore MSA. | Winchester City | |
| VA | Roanoke Area (part of Roanoke MSA) | Frederick County | 85 |
| | | Roanoke County* | 87 |
| | | Botetourt County* | |
| | | Roanoke City* | |
| | | Salem City* | |
| MD | Washington County (west of Washington, DC—part of Washington-Baltimore CMSA). | Washington County* | 87 |
| WV | The Eastern Pan Handle Region (Martinsburg area—part of Washington-Baltimore MSA). | Berkeley County* | |
| | | Jefferson County* | |
| EPA Region 4 | | | |
| NC | Mountain Area of Western NC (Asheville MSA + additional counties) | Buncombe County* | 85 |

⁹“Our Built and Natural Environments” (EPA 231–R–01–002, January 2001).

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES—Continued

| State | Compact area | County | 2000–2002 Ozone design value, ppb ozone |
|-------|--|---|--|
| NC | Unifour (Hickory-Morganton-Lenoir MSA) | Haywood County | 87 |
| | | Henderson County | |
| | | Madison County* | |
| | | Transylvania County | |
| | | Catawba County* | |
| NC | Triad (Greensboro-Winston Salem—High Point MSA + additional counties). | Alexander County* | 91 |
| | | Burke County* | |
| NC | Triad (Greensboro-Winston Salem—High Point MSA + additional counties). | Caldwell County* | 86 |
| | | Surry County | |
| | | Yadkin County* | |
| | | Randolph County* | |
| | | Forsyth County* | 94 |
| | | Davie County* | 95 |
| | | Alamance County* | |
| | | Caswell County | 91 |
| | | Davidson County* | |
| | | Stokes County* | |
| | | Guilford County* | 93 |
| | | Rockingham County | 90 |
| | | NC | Fayetteville (Fayetteville MSA) |
| SC | Appalachian—A (Greenville-Spartanburg-Anderson MSA + additional counties). | Cherokee County* | 87 |
| SC | Catawba—B (part of Charlotte-Gastonia-Rock Hill MSA) | Spartanburg County* | 90 |
| | | Greenville County* | |
| | | Pickens County* | 85 |
| | | Anderson County* | 88 |
| | | Oconee County | 87**/84 |
| SC | Pee Dee—C (Florence MSA + additional counties) | York County* | 84 |
| | | Chester County | 84 |
| | | Lancaster County | |
| SC | Waccamaw—D (Myrtle Beach MSA + additional counties) | Union County | 81 |
| | | Florence County* | |
| | | Chesterfield County | |
| | | Darlington County | 86 |
| | | Dillon County | |
| SC | Santee Lynches—E (Sumter MSA + additional counties) | Marion County | |
| | | Marlboro County | |
| | | Williamsburg County | 73 |
| SC | Berkeley-Charleston-Dorchester—F (Charleston-North Charleston MSA) | Georgetown County | |
| | | Horry County* | |
| | | Clarenton County | |
| SC | Low Country—G (Beaufort area/not a MSA) | Lee County | |
| | | Sumter County* | |
| | | Kershaw County | |
| | | Dorchester County* | |
| | | Berkeley County* | 81**75 |
| SC | Lower Savannah-Augusta (part of Augusta-Aiken MSA + additional counties). | Charleston County* | 77**/74 |
| | | Beaufort County | |
| | | Colleton County | 80 |
| | | Hampton County | |
| | | Jasper County | |
| SC/GA | Lower Savannah-Augusta (part of Augusta-Aiken MSA + additional counties). | Aiken County, SC | 83 |
| SC | Central Midlands—I (Columbia MSA + additional counties) | Orangeburg County, SC | |
| | | Barnwell County, SC | 83 |
| | | Calhoun County, SC | |
| | | Allendale County, SC | |
| | | Bamberg County, SC | |
| | | Richmond County, GA* | 87 |
| | | Columbia County, GA* | |
| SC | Upper Savannah—(Abbeville-Greenwood area/not a MSA) | Richland County* | 93 |
| | | Lexington County* | |
| | | Newberry County | |
| | | Fairfield County | |
| | | Abbeville County | |
| SC | Upper Savannah—(Abbeville-Greenwood area/not a MSA) | Edgefield County* (in Augusta-Aiken MSA). | 83 |
| | | Laurens County | |

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES—Continued

| State | Compact area | County | 2000–2002 Ozone design value, ppb ozone |
|---------------------|--|---------------------------------|---|
| TN/GA | Chattanooga (Chattanooga MSA + additional county) | Saluda County | |
| | | Greenwood County | |
| | | Hamilton County, TN* | 93 |
| | | Meigs County, TN* | 93 |
| | | Marion County, TN* | |
| TN | Knoxville (Knoxville MSA + additional counties) | Walker County, GA* | |
| | | Catoosa County, GA* | |
| | | Knox County* | 96 |
| | | Anderson County* | 92 |
| | | Union County* | |
| | | Loudon County* | |
| | | Blount County* | 94 |
| | | Sevier County* | 98 |
| | | Jefferson County | 95 |
| | | Davidson County* | 80 |
| TN | Nashville (Nashville MSA) | Rutherford County* | 84 |
| | | Williamson County* | 87 |
| | | Wilson County* | 85 |
| | | Sumner County* | 88 |
| | | Robertson County* | |
| | | Cheatham County* | |
| | | Dickson County* | |
| TN/AR/MS | Memphis (Memphis MSA) | Shelby County, TN* | 90 |
| | | Tipton County, TN* | |
| | | Fayette County, TN* | |
| | | DeSoto County, MS* | 86 |
| | | Crittenden County, AR* | 94 |
| TN | Haywood County (near Memphis)—adjacent to Memphis MSA and Jackson MSA. | Haywood County | 86 |
| TN | Putnam County (central TN, between Nashville and Knoxville)—not a MSA. | Putnam County | 86 |
| TN | Johnson City-Kingsport-Bristol Area—portion of the Johnson City-Kingsport-Bristol MSA + additional county. | Sullivan County, TN* | 92 |
| | | Hawkins County, TN* | |
| | | Washington County, TN* | |
| | | Unicoi County, TN* | |
| | | Carter County, TN* | |
| | | Johnson County, TN. | |
| EPA Region 6 | | | |
| TX | Austin/San Marcos (Austin-San Marcos MSA) | Travis County* | 85 |
| TX | Northeast Texas (Longview-Marshall & Tyler MSAs + additional county) | Williamson County* | |
| | | Hays County* | |
| | | Bastrop County* | |
| | | Caldwell County* | |
| | | Gregg County* (Longview MSA) | 88 |
| TX | San Antonio (San Antonio MSA) | Harrison County* (Longview MSA) | |
| | | Rusk County | |
| | | Smith County* (Tyler MSA) | 84 |
| | | Upshur County* (Longview MSA) | |
| OK | Oklahoma City (Oklahoma City MSA) | Bexar County* | 86 |
| | | Wilson County* | |
| | | Comal County* | |
| | | Guadalupe County* | |
| | | Canadian County* | |
| OK | Tulsa (part of Tulsa MSA) | Cleveland County* | 77 |
| | | Logan County* | |
| | | McClain County* | 79 |
| | | Oklahoma County* | 82 |
| | | Pottawatomie County* | |
| | | Tulsa County* | 87 |
| LA | Shreveport-Bossier City (Shreveport-Bossier City MSA) | Creek County* (part) | |
| | | Osage County* (part) | |
| | | Rogers County* (part) | |
| | | Wagoner County* (part) | |
| | | Bossier Parish* | 84 |
| Caddo Parish* | 79 | | |
| | | Webster Parish* | |

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES—Continued

| State | Compact area | County | 2000–2002 Ozone design value, ppb ozone |
|---------------------|--|---|---|
| NM | San Juan County (Farmington area—not a MSA, but a southeast segment is adjacent to Albuquerque MSA). | San Juan County | 76 |
| EPA Region 8 | | | |
| CO | Denver (part of Denver-Boulder-Greeley MSA) | Denver County* | 72 |
| | | Boulder County* (excluding Rocky Mtn National Park). | 73 |
| | | Jefferson County* | 83 |
| | | Douglas County* | 80 |
| | | City/County of Broomfield* (a new county downtown). | |
| | | Adams* and Arapahoe* Counties (the part west of Kiowa Creek) (excludes extreme eastern portions of counties). | 64, 76 |

Note: The air quality information in this table is based on 2000–2002 data from monitors (where available) located in each county of a compact area. Ozone designations in April 2004 will be based on 2001–2003 data. The boundaries of these compact areas will not necessarily correspond to the boundaries for the 8-hour ozone nonattainment areas that will be designated in April 2004. An ozone design value of 85 ppb or greater indicates a violation of the 8-hour ozone standard. A single asterisk following a county name means that county is included in a Consolidated/Metropolitan Statistical Area (C/MSA). In a few counties, higher historical design values (indicated by double asterisks) are also listed when 2000–2002 design values are not complete at a monitoring site. A blank in the last column means either no monitor is located in the county or the monitor(s) in the county have recorded less than 3 years of data.

VII. What Are the Impacts of This Action?

This section discusses the effect of this proposed rule on compact areas, including the regulatory effects and the consequences of participation in these compacts.

A. What Are the Regulatory Effects of This Action?

Since the effective date of the nonattainment designation would be deferred for compact areas that are violating the 8-hour standard, all CAA requirements for the 8-hour standard

that would apply to an area designated nonattainment for that standard, such as new source review (NSR) and transportation conformity, would not apply during the deferral period.

In April 2004, the Agency will designate areas as nonattainment based on 2001–2003 air quality monitoring data. However, based on 2000–2002 data, we do know that of those compact areas that are violating the 8-hour ozone standard, most are very close to the standard. We believe many of these areas, if their nonattainment designations were not deferred, would be classified under subpart 1 of the

CAA, if EPA adopted its preferred classification scheme described in the June 2, 2003 proposed rule to implement the 8-hour ozone standard (68 FR 32866). Table 4 is a summary of the requirements that would apply if compact areas do not receive a deferred nonattainment effective date and instead become classified under subpart 1. Providing information about subpart 1 requirements in this notice does not imply that we have decided not to adopt our proposed classification option 1, which would have placed all areas under subpart 2.

TABLE 4.—SUBPART 1 NONATTAINMENT AREA REQUIREMENTS

- Achieve attainment as expeditiously as practicable, but no later than 5 years after designation. EPA may grant an additional 5-year extension under certain circumstances.
- Reasonable Further Progress (RFP).
- Reasonably Available Control Measures requirement.
- Attainment demonstration.
- Major source definition of 100 tons per year or more for NSR and Reasonably Available Control Technology.
- NSR offset ratio of greater than 1 to 1.
- NSR permit program.
- Emissions inventory.
- Transportation conformity.
- Contingency measures to take effect in the event of failure to show RFP or to attain.

Conversely, with a deferred effective date, a compact area would not be subject to the requirements listed above, as long as the area continues to meet all

of its milestones as described in Section V, Table 1, of this notice.¹⁰

¹⁰Note that compact areas that have maintenance plans for any other NAAQS, including the ozone 1-hour standard, are still subject to the requirements in the maintenance plan, such as contingency measures. In addition, transportation conformity

B. What Are the Consequences of Compacts for Local Areas?

In addition to the benefit of early reductions, there are other

would continue to apply for such areas for the 1-hour standard and any other applicable standards.

consequences associated with participating in these compacts, some of which are noted below.

1. Compacts give local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the communities control emissions from local sources earlier than the CAA would otherwise require, consistent with timelines in the Protocol.

2. If all terms of the agreement are met, EPA would defer the effective date of the nonattainment designation for compact areas.

3. People living in areas that realize reductions sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur.

4. Reductions in emissions from pollution control measures that are implemented as part of a compact are creditable toward air quality planning goals, to the extent credit is allowed by EPA guidance and the CAA.

5. Success of compacts depends on active and sustained participation by all stakeholders.

6. Compact areas (as well as non-compact areas) that are maintenance areas for the 1-hour ozone standard would still be subject to transportation conformity requirements for the 1-hour standard while the maintenance plan for the area is still in force under section 175A of the CAA. (Note that EPA has proposed that when it revokes the 1-hour ozone standard, transportation conformity under the 1-hour standard would no longer apply to 1-hour maintenance areas.)

7. Compact areas in the Ozone Transport Region are still subject to nonattainment NSR in accordance with section 184(b)(2) of the CAA for so long as the 1-hour ozone NAAQS continues to apply.

8. Because they are not considered nonattainment for the 8-hour ozone NAAQS until the effective date, compact areas are not eligible for Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds for purposes of the 8-hour ozone NAAQS.

9. Compact areas have an aggressive, accelerated program of milestones to meet. If an area misses a milestone, its nonattainment designation will take effect, and as such, will be subject to all of the requirements for nonattainment areas.

VIII. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas as attaining or not attaining that NAAQS. The CAA then

specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. This proposed rule provides flexibility for areas that have entered into a compact and take early action to achieve emissions reductions necessary to attain the 8-hour ozone standard. This action proposes to defer the effective date of the nonattainment designation for these areas and would allow these areas to adopt control requirements agreed to by the affected localities.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the above factors applies. As such, this proposed rule was not formally submitted to OMB for review.

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.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 today's proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a 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 proposed rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, this rule would defer the 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. In addition, States and local areas that have entered into compacts with EPA have the flexibility to decide what to regulate in their communities.

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 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. Today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The CAA requires States to develop plans, including control measures, based on their designations and classifications. In this rule, EPA is deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us. This rule is not establishing a specific requirement for States to submit SIPs, nor does it impose any regulatory requirements. However, even if this rule did establish such a requirement, it is questionable whether a requirement to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to submit a SIP that arises out of section 110 and part D of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

In the proposal, EPA has determined that this rule contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Nonetheless, EPA carried out consultations with governmental entities affected by this rule, including States and local air pollution control agencies.

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 proposed 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. Finally, the CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This proposed 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.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA discussed the compact program with representatives of State and local air pollution control agencies, as well as the Clean Air Act Advisory Committee, which is also composed of State and local representatives.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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 proposed rule does not have "Tribal implications" as specified in Executive Order 13175.

This proposed rule concerns the deferral of the effective date of nonattainment designation of the 8-hour ozone standard in compact areas that do

not meet that standard, but continue to meet compact milestones. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. Early Action Compact areas that would be affected by this proposed rule would be required to develop and submit local plans for adoption and implementation of the 8-hour ozone standard earlier than the CAA requires. These plans would be submitted to EPA as SIP revisions in December 2004 rather than in April 2007. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as the 8-hour 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 proposed rule does not have Tribal implications as defined by 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. Furthermore, this proposed rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this proposed rule does nothing to modify that relationship. Because this proposed rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this proposed rule, EPA did outreach to Tribal representatives to inform them about the compact program, its impact on designations, and this proposed rule. The EPA supports a national "Tribal Designations and Implementation Work Group" which provides an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the 8-hour ozone standard. These discussions have given EPA valuable information about Tribal concerns regarding designations and implementation of the 8-hour ozone NAAQS. The EPA has encouraged Tribes to participate in the national public meetings held to take comment on early approaches to the proposed rule. Several Tribes made public comments at the April 2002 public meeting in Tempe, Arizona. The EPA specifically solicits additional comment on this proposed rule from Tribes.

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 proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this evaluation are contained in 40 CFR part 50, NAAQS for Ozone, Final Rule (62 FR 38855–38896; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

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

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions That

Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. April 24, 2003.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Pub. L. 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 proposed rulemaking 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 proposed 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.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection.

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: November 11, 2003.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–31109 Filed 12–15–03; 8:45 am]

BILLING CODE 6560–50–P