

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2003-0090; FRL-8332-2]

RIN 2060-A005

**Extension of the Deferred Effective Date for 8-hour Ozone
National Ambient Air Quality Standards for the Denver Early
Action Compact****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final Rule.

SUMMARY: The EPA is taking final action to extend the deferral of the effective date of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) designation for the Denver Early Action Compact (EAC) from July 1, 2007 to September 14, 2007. The EAC areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. On November 29, 2006, EPA extended the deferred effective date for the Denver EAC area from December 31, 2006, to July 1, 2007. In that final rulemaking, EPA noted that there were issues with Denver's EAC that would need to be addressed before EPA would extend their deferral until April 15, 2008. The action extending the deferral to July 2007 was challenged, and the parties are discussing settlement. EPA is now issuing a short further deferral to preserve the status quo as settlement

discussion take place. EPA is issuing at this time a short further deferral of the effective date of Denver's designation for the 8-hour ozone standard from July 1, 2007 to September 14, 2007.

EFFECTIVE DATE: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: 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 www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., 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 www.regulations.gov or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, 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 Web site at <http://www.epa.gov/ttn/naaqs/ozone/eac/>.

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 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.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to me?

This action applies only to the Denver EAC area.

B. How is This Document Organized?

The information presented in this preamble is organized as follows:

Outline

I. General Information

A. Does this Action Apply to Me?

B. How is This Document Organized?

II. What is the Purpose of This document?

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

- IV. What Progress has the Denver Early Action Compact Area Made?
- V. What comments did EPA receive on the March 1, 2007 proposal to extend the deferral of the effective date of the nonattainment designation for the Denver Early Action Compact?
- VI. What is the Final Action for the Denver Early Action Compact Area?
- VII. What is EPA's Schedule for Taking Further Action for Early Action Compact Areas?
- VIII. 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 issue a short further deferral of the effective date of the 8-hour ozone nonattainment designation for the Denver EAC area from July 1, 2007 to September 14, 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 EAC 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 compact and the impacts of the compact on those areas.

On December 31, 2002, we entered into compacts with 33 communities. To receive the first deferral, these EAC areas agreed to reduce ground-level ozone pollution earlier than the CAA would require. The EPA agreed to provide an initial deferral of the nonattainment designations for those EAC areas that did not meet the 8-hour ozone NAAQS as of April 30, 2004, and to provide subsequent deferrals contingent on performance vis-à-vis certain milestones. On December 16, 2003 (68 FR 70108), we published our proposed rule to defer until September 30, 2005, the effective date of designation for EAC areas that did not meet the 8-hour ozone NAAQS. Fourteen of the 33 compact areas did not meet the 8-hour ozone NAAQS.

Our 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/milestones 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, two 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 this second deferral, EAC areas needed to submit a State Implementation Plan (SIP) with locally adopted measures and a modeled attainment demonstration 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 EAC program may be found on EPA's website at: www.epa.gov/ttn/naaqs/ozone/eac/.

On November 29, 2006, we published a final rule extending the deferred effective date of designation for 13 EAC areas from December 31, 2006, to April 15, 2008, and for the Denver EAC area until July 1, 2007. For that deferral, 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/>. Issues were noted by the State of Colorado with the Denver EAC area regarding emissions from oil and gas exploration and production condensate tanks. In 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. In response to this issue, the State of Colorado initiated public rulemaking activities to amend Colorado's Regulation No. 7 to require additional emissions 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, an issue arose because the State's rulemaking efforts before the Colorado Air Quality Commission (AQCC) in the latter part of 2006 would not be completed before EPA needed to publish a final rule for the last deferral of the effective date of the nonattainment designations for all of the EAC areas (see 71 FR 69022, November 29, 2006).

Based on the above information, EPA decided to defer the effective date of the nonattainment designation for the Denver EAC area until July 1, 2007. This decision was designed to accommodate the necessary State rulemaking activities and to also ensure that continued progress was made on the Regulation No. 7 rulemaking actions as they proceeded before the AQCC and State Legislature. In our November 29, 2006, final rulemaking, we detailed a timeline for subsequent rulemaking action for the Denver EAC area.

Since the November 29, 2006, rulemaking, all compact areas submitted their six month progress reports in December 2006 as required. These reports were reviewed and approved by EPA. You may find copies of the December progress reports at

<http://www.epa.gov/ttn/naaqs/ozone/eac/index.htm#List>

IV. What Progress has the Denver Early Action Compact Area Made?

On December 31, 2006, the State of Colorado submitted their progress report for the Denver EAC area to EPA indicating that progress had been made in several areas. On September 21, 2006 the Colorado Department of Public Health and Environment's (CDPHE) Air Pollution Control Division (APCD) presented proposed revisions to Colorado's

Regulation No. 7, before the Colorado AQCC, for a more stringent regulatory scheme to control VOC's from oil and gas exploration and production condensate tanks located in the Denver EAC area. These proposed revisions to Section XII of Regulation No. 7 were amended and adopted by the AQCC on December 17, 2006 along with associated revisions to the EPA-approved Denver EAC Ozone Action Plan. These AQCC rulemaking actions are for the purpose of achieving the required VOC emissions reductions from the oil and gas exploration and production condensate tanks that are located within the Denver EAC area boundary. In addition, the State continues working with all parties to reduce emissions of ozone and its precursors.

The EPA's deferral of the effective date of the nonattainment designation of the Denver EAC area was based upon the actions of the AQCC on December 17, 2006, to approve revisions to Colorado's Regulation No.7 and also in consideration of the review of those AQCC-approved revisions, from January 15, 2007, to February 15, 2007, by the Colorado State Legislature. The State Legislature did not object or seek further review of the December 17, 2006, actions of the AQCC, which meant that all changes to Regulation No.7 were automatically adopted and were to be

submitted to EPA for final approval and incorporation into the SIP. The changes in Regulation 7 contain a compliance date of May 1, 2007, which is just before the beginning of the Colorado high ozone season.

V. What comments did EPA receive on the March 1, 2007 proposal to extend the deferral of the effective date of the nonattainment designation for the Denver Early Action Compact?

We received 12 comments on the proposed rule to extend the deferred effective date of the nonattainment designation for the Denver EAC to April 15, 2008. We have responded to the comments in this section.

Comment: Two commenters stated that EPA lacks authority under the CAA to defer the effective date of nonattainment designations (in particular as this applies to the Denver EAC); enter into EACs with areas; and allow areas to be relieved of obligations under Title I, Part D of the CAA while they are violating the 8-hour ozone standard or are designated nonattainment for that standard.

Response: We have determined that EACs as designed, give local areas and the State the flexibility to develop their own approach to meeting the 8-hour ozone standard. In this case, the State of Colorado is serious in its

commitment and has made progress implementing State and local measures for controlling emissions from sources earlier than the CAA would otherwise require. People living in the Denver metropolitan area and other EAC areas are already breathing healthier air due to reductions in ozone pollution achieved by the EAC attainment plan and these benefits would not otherwise have been realized until after June 2007 if the Denver EAC and other EAC areas had been designated nonattainment.

Comment: One commenter expressed concerns that if Denver violated the 8-hour ozone standard, EPA would not designate the area nonattainment.

Response: EPA's requirements for EAC areas are codified at 40.CFR 81.300, and ensure that if Denver violates the 8-hour ozone standard, the nonattainment designation for the area will take effect. Under these provisions, States with EAC areas have until December 31, 2007, to demonstrate attainment of the 8-hour ozone NAAQS. If an EAC area does not attain the 8-hour ozone standard, the nonattainment designation becomes effective as of April 15, 2008. See 40 CFR 81.300(e)(3)(ii)(C). The area will then be subject to the full planning requirements of title I, part D of the CAA. 40 CFR 81.300 requires former EAC

areas that are designated nonattainment to submit a revised attainment demonstration SIP within 1 year of the effective date of the nonattainment designation.

Comment: The emissions reductions from the final revised Regulation No. 7 will be less than reductions that would have been achieved by the original proposed revisions.

Response: We believe the modeled attainment demonstration is the appropriate benchmark for our consideration, not whether the original proposed revisions would have achieved a 77% reduction versus a 75% reduction achieved by the adopted rules. After EPA initially approved the attainment demonstration for the area, the State and EPA realized that the rules requiring reductions of VOC emissions from condensate tanks did not achieve the level of reduction relied on as part of the modeled attainment demonstration. This is because growth in condensate tank flash emissions was significantly greater than anticipated. According to the State's updated inventory projections and calculations, the 75% reduction of VOC emissions required by Section XII of Colorado's revised Regulation No.7 is consistent with the control scenario inventory value for 2007(91.3 tons per day)relied

on in the modeled attainment demonstration. See the Colorado Air Pollution Control Division's presentation for the rulemaking hearing on the revisions to Regulation No. 7, which can be found at <http://www.cdphe.state.co.us/ap/reg7/Reg7AQCCDec.pdf>.

Comment: Due to the change to weekly calculations of emissions and the use of a system-wide approach, APCD and citizens won't know if required reductions are met until after the fact. Citizens will not be able to react in time to prevent unhealthy ozone pollution if companies fail to meet the required emissions reductions.

Response: While we originally favored the threshold approach, we believe the system-wide approach is enforceable and will lead to the projected reductions. We already approved a system-wide approach when we approved the previous revisions to Regulation No.7 (See 70 FR 48652, August 19, 2005). We believe the current revisions make significant improvements to the original approach that will lead to improved compliance. We note that with any emission limit, compliance is judged after the fact. The commenter did not provide (and EPA is not aware of) any support for his concern that weekly calculations will

significantly alter EPA's, the State's or a citizen's ability to address violations in a timely way.

Comment: The commenter is concerned that the Denver EAC area's ozone levels approached unhealthy levels in 2006.

Response: EPA agrees that several exceedances of the 8-hour ozone NAAQS were observed in the Denver EAC area's air quality monitoring network 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 the Denver EAC area 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 revised Regulation No.7 will achieve are important to ensure that air quality in the area remains below the standard. EPA notes the commenter's concerns for the potential for a violation of the 8-hour ozone NAAQS during the 2007 ozone

season. If this happens, the area will be designated nonattainment.

Comment: It is unclear how deferring Denver's nonattainment designation will further the goal of reducing ozone pollution/protecting health.

Response: We believe that the EAC has already achieved reductions in ozone precursor emissions that would not yet have been achieved had Denver followed the traditional nonattainment designation pathway. The State's and the area's desire to achieve an attainment designation has led to two rounds of significant revisions to Colorado's Regulation No.7, revisions that are already reducing ozone pollution in the area. If the area had been designated nonattainment on June 15, 2004, an attainment demonstration SIP wouldn't have been due until June 15, 2007. Thus, with the EAC, emission reductions have been achieved earlier than they would have been under the standard designation procedures.

Comment: The commenter notes that the Denver EAC has fallen short of achieving the planned reductions in emissions of ozone forming compounds from condensate tanks.

Response: The commenter is correct that actual growth in flash emissions of VOCs has significantly exceeded the

State's projections in the original Denver EAC SIP as approved by EPA on August 19, 2005 (70 FR 48652). The State identified this issue in its June 2, 2006, EAC progress report and has since taken steps to address it.

We explain this more fully in our final rule of November 29, 2006 (71 FR 69022). In that final rule, we discuss the State's acknowledgement of the increase in VOC emissions from oil and gas activities, the State's report of June 2, 2006, detailing these findings (see 71 FR 69023), and the State's rulemaking efforts to achieve the necessary additional emission reductions to meet the projections relied upon in the EPA-approved attainment demonstration (see 71 FR 69025.) As noted in our proposed rule of March 1, 2007 (72 FR 9285), the State revised Colorado's Regulation No.7, "Emissions of Volatile Organic Compounds," 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. The Colorado AQCC approved these revisions to Regulation No. 7 on December 17, 2006. Thus, the State has taken the steps necessary to address the shortfall in emission reductions under the prior version of Colorado's Regulation No. 7.

Comment: The commenter expresses concerns with emissions of ozone forming compounds from other oil and gas exploration and production activities that were not addressed as part of the Denver EAC attainment demonstration, such as emissions from drill rigs, well completions, fugitive leaks, water tanks, and heater treaters. According to the commenter, oil and gas drilling has increased north of Denver, and infrared photography shows the potentially large amount of fugitive emissions from condensate tanks.

Response: We note that the State is not required to control all emission sources as part of its SIP. Instead, the goal of the SIP program is to ensure that sources are controlled to ensure that the area will attain and maintain the relevant NAAQS. The State is free to choose the mix of sources necessary to achieve that goal and EPA cannot second guess the State if the plan demonstrates compliance with the NAAQS. At the time the State was conducting the modeling for the attainment demonstration, flash emissions from condensate tanks were considered the most significant source of largely uncontrolled VOC emissions. As a result, the State targeted control of these emissions as the best means to attain the 8-hour ozone standard. By correcting

the defects in the regulation regulating these sources, we believe the State's plan will demonstrate attainment and maintenance of the 8-hour NAAQS and we cannot disapprove the plan on the basis that the State has not chosen to regulate certain other sources to reach this goal.

Regarding fugitive emissions and infrared photography, we note that photos at one source may not be representative of emissions at another source, and the infrared photos shown tell us nothing about the VOC concentrations in the emissions.

Comment: The commenter is concerned that 29 reciprocating internal combustion engines have been granted exemptions from installing pollution controls to reduce emissions of VOCs and nitrogen oxide (NO_x). The commenter indicates that Kerr-McGee has simply failed to install the controls at 11 of its internal combustions engines.

Response: Certain reciprocating internal combustion engines have been granted exemptions from controlling emissions of VOCs because they meet the exemption criteria stipulated in section XVI of Colorado's Regulation No. 7. EPA approved the control requirements and these exemption criteria for internal combustion engines when it approved

the rest of Colorado's Regulation No. 7 on August 19, 2005 (see 70 FR 48652).

Regarding Kerr-McGee's 11 engines, the State has issued a Notice of Violation and is currently negotiating a settlement with Kerr-McGee to control emissions from these engines. In other words, the State is taking appropriate steps to ensure compliance with the EAC plan and Colorado's Regulation No. 7.

Comment: The commenter is concerned that the modeling for the EAC may have underestimated emissions due to the reactivity of VOC emissions.

Response: The reactivity of VOC emissions is embedded as a function in the EPA-approved CAMx dispersion model that the State used to model attainment in the Denver EAC area. Measured values for the various VOCs are input into the CAMx model, and the model's embedded Carbon Bond photochemical algorithm processes these values to produce an estimate of ozone concentrations. This algorithm has reactivity profiles for each VOC chemical species already built into it. We don't adjust the reactivities for individual SIP applications - the Carbon Bond mechanism is a "canned" algorithm. While the commenter is correct that alkanes as a group may be more reactive as an ozone

precursor in an urban atmosphere where there are more compounds with which to react, the Carbon Bond mechanism already accounts for this; the reactivity profiles account for a higher degree of chemical reactivity in a polluted urban environment. We note that the State's contractor utilized the most current version of CAMx when it conducted the dispersion modeling in 2003 and early 2004.

Comment: The commenter noted that industry is failing to fully comply with the required emission reductions from flash emissions from condensate tanks as required under the EAC.

Response: While EPA agrees that compliance with the control requirements in the approved attainment demonstration has not been 100%, we note that the State is taking appropriate steps to achieve the compliance effectiveness to support the EAC. We note the table provided in the commenter's letter presents historical information from 2005.

On December 31, 2006, the State submitted a progress report for the Denver EAC area to EPA indicating that progress has been made in several areas. Additional compliance data collected by the State indicated overall control for the 2006 ozone season met Regulation No. 7's

47.5% VOC emission reduction requirement. This is because some larger sources achieved greater reductions than required. For those sources that did not meet the regulation's requirements, the State is pursuing enforcement/negotiations to ensure compliance.

Additionally, the table the commenter cites may not accurately address those condensate tanks that were exempt from the requirements of section XII of Regulation No. 7. For example, the entry for Machii Ross shows uncontrolled emissions of 17.04 tons per year which would have made this an exempt facility; at that time, controls were only required if emissions were 30 tons per year or greater.

Finally, compliance shortcomings are not unusual when an activity or industry is first regulated. We have no reason to think that compliance would have been better if the area had been designated nonattainment. If the State had not moved to rectify the problems, we would be very concerned. However, we believe the State is taking appropriate steps to ensure compliance with the EAC attainment plan and Colorado's Regulation No. 7, and we believe these steps will result in rates of compliance consistent with projections.

Comment: The commenter raises a concern that the revisions to Colorado's Regulation No. 7, adopted by the AQCC on December 17, 2006, have not been incorporated into the Colorado SIP.

Response: The commenter is correct that the revisions to Regulation No. 7 have not been federally-approved and incorporated into Colorado's SIP. However, as described in our proposed rule of March 1, 2007 (72 FR 9285), the revisions to Colorado's Regulation No. 7 made it through Colorado's Legislative review process without changes, and we expect to receive the Governor's submittal of the revisions for our approval shortly. Once we receive the submittal, we intend to expedite our action on it.

In the meantime, the Regulation No. 7 revisions have been adopted by the State and are fully enforceable by the State. Sources must start complying with the revised regulation by May 1, 2007. As indicated in response to previous comments, the State is taking appropriate steps to ensure compliance with the regulation, and we fully expect the State will continue its efforts.

VI. What is the Final Action for the Denver Early Action Compact Area?

Rocky Mountain Clean Air Action (RMCAA) challenged our action deferring the effective date of the nonattainment designation of the Denver EAC area until July 1, 2007. 71 Fed. Reg. 69022 (November 29, 2006). Rocky Mountain Clean Air Action v. EPA, D.C. Cir. No. 07-1012. We are currently in settlement discussions with RMCAA. In order to preserve the status quo while we continue settlement discussions, we are taking final action at this time to issue a short further deferral of the effective date of designation for Denver until September 14, 2007. We are leaving open our proposal to the extent that we initially proposed to extend the deferral to as late as April 15, 2008. We may in the future take additional final action pursuant to that proposal to extend the deferral beyond September 14, 2007.

This action will be effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Because this action will relieve a restriction by further deferring the effective date of the nonattainment designation for the Denver EAC area, the requirement of section 553(d) of the Administrative Procedure Act that a rule not take effect earlier than 30-days following publication does not apply.

VII. What is EPA's Schedule for Taking Further Action for Early Action Compact Areas?

All 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, attained the 8-hour ozone NAAQS by December 31, 2007, and met all compact milestones. If the area did not attain the standard, the nonattainment designation will take effect. If the compact area attained the standard, EPA will designate the area as attainment. Any compact area that did not attain 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.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO. Accordingly, EPA submitted this action to the Office of Management and

Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

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 Office of Management and Budget (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 proposed 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 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 final rule will not impose any requirements on small entities. Rather, this rule would extend the deferred effective date of the nonattainment designation for the Denver area to 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.

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 designation for the Denver EAC. Thus, this final rulemaking is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because this rule does not contain Federal mandates.

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 E.O. 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, E.O. 13132 does not apply to this final 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 E.O. 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 E.O. 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.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks

addressed by this action present a disproportionate risk to children.

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

This final rule is not subject to E.O. 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 E.O. 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 (59 FR 7629; Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. 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 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 60 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: June 22, 2007.

Stephen L. Johnson,
Administrator.

For the reason set out in the preamble, title 40, chapter I of the Code of Federal Regulations 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 the last sentence in paragraph (e)(3)(i) to read as follows:

§81.300 Scope.

* * * * *

(e) * * *

(3) * * *

(i) *General.* * * * The Administrator shall defer until September 14, 2007 the effective date of a nonattainment designation of the Denver area.

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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)

* * * * *

² Early Action Compact Area, effective date deferred
until September 14, 2007.

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