

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2003-0090; FRL-8469-8]

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 September 14, 2007 to November 20, 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 was litigation regarding the deferral of the effective date for the Denver EAC and that the parties were discussing settlement. Thus, in the interest of maintaining the status quo while settlement discussion proceeded, EPA issued a brief further deferral of the effective date of the nonattainment designation

until September 14, 2007. The parties are continuing settlement discussions. 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 September 14, 2007 to November 20, 2007.

EFFECTIVE DATE: This final rule is effective on September 14, 2007.

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 Building, EPA Headquarters Library, Room 3334, located at 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room Hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), 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. The Air and Radiation Docket Information Center's email address is a-and-r-Docket@epa.gov, and web address is: <http://www.epa.gov/oar/docket.html>. In addition, we have placed a copy of the rule and a variety of materials relevant to EAC 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 is the Final Action for the Denver Early Action Compact Area?

V. 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 September 14, 2007 to November 20, 2007.

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

For discussions on 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 and Denver specifically please refer to the Federal Register dated June 28, 2007 (72 FR 35356). In addition, 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.

Since the June 28, 2007, rulemaking, all compact areas submitted their 6 month progress reports by June 30, 2007 as required. These reports were reviewed and approved by EPA. You may find copies of all progress reports at <http://www.epa.gov/ttn/naaqs/ozone/eac/index.htm#List>

IV. 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 FR 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 allow the settlement process to continue, we are taking final action at this time to issue a short further deferral of the effective date of designation for Denver until November 20, 2007. By November 20, 2007, EPA will: (i) evaluate the 8-hour ozone air quality data for the Denver EAC area from 2005, 2006 and the first three quarters of 2007; and, (ii) if the data do not indicate a violation of the 8-hour ozone standard, issue a final rule further extending the deferral of the effective date of the nonattainment designation until April 15, 2008; and, (iii) if the data indicate a violation, take no further action and the nonattainment designation will become effective November 20, 2007.

We are taking this action pursuant to our March 1, 2007 proposed rule whereby we proposed to extend the effective date of the designation until April 15, 2008. We incorporate by reference our responses to the comments received on that proposal, which were included in our June 28, 2007 final rule extending the deferral of the effective date for the Denver EAC area until September 14, 2007.

This action will be effective **[INSERT DATE DAY AFTER SIGNATURE]**. 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.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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 final rule on small entities, small entity is defined as: (1) a small business that is a small industrial entity as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Rather, this rule would extend the deferred effective date of the nonattainment designation for 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 September 14, 2007.

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: September 12, 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 November 20, 2007 the effective date of a nonattainment designation of the Denver area.

* * * * *

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 November 20, 2007.

* * * * *