

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2008-0006; FRL-]

**Final 8-hour Ozone National Ambient Air Quality Standards
Designations for the Early Action Compact Areas****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed Rule.**SUMMARY:** The EPA is proposing to designate 13 Early Action Compact (EAC) Areas as attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The EAC areas agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) required and to demonstrate attainment with the 8-hour ozone NAAQS by December 31, 2007. The States in which these 13 areas are located have submitted quality-assured data indicating that the areas are in attainment for the 8-hour ozone NAAQS based on ambient air monitoring data from 2005, 2006 and 2007. In addition, the EPA plans to revoke the 1-hour ozone NAAQS for each of these areas one year after the effective date of the designations for the 8-hour ozone NAAQS, and we would modify the 1-hour ozone NAAQS tables in the regulations to reflect the application of the revocation.

DATES: Comments must be received on or before [**INSERT DATE 15 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-OAR-2008-0006, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: A-and-R-Docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Docket. EPA-HQ-OAR-2008-0006, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, Northwest, Washington, DC 20460. Please include two copies.
- Hand Delivery: Deliver your comments to: Air Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW, Room 3334, Washington, DC 20004, Attention: Docket ID No.EPA-HQ-OAR-2008-0006. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No.EPA-HQ-OAR-2008-0006. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For further information about EPA's

public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, 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. A reasonable fee may be charged for copying. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

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.

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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to me?

This proposed action applies only to the 13 EAC areas identified in section IV, Table 1, below that have deferred designations for the 8-hour ozone NAAQS until April 15, 2008. Additionally, this action notes that in the final rule, EPA plans to take the ministerial action of revising the CFR to reflect the effective date of the nonattainment designation for the Denver EAC area, which was designated nonattainment on November 20, 2007.

B. How is This Document Organized?

The information presented in this preamble is organized as follows:

Outline

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 - B. How is This Document Organized?
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- IV. What is the Proposed Action for the 13 Early Action Compact Areas?
- V. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
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- 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

II. What is the Purpose of this Document?

The purpose of this document is to propose designating 13 EAC areas as attainment for the 8-hour ozone NAAQS, as they have met all the milestones of the EAC program and demonstrated that they were in attainment with the 8-hour ozone NAAQS by December 31, 2007. At the time we take final action on this proposal we also plan to take the ministerial action of revising Section 81.306 to reflect the nonattainment designation for the Denver EAC area. On September 21, 2007, EPA extended the deferred effective date for the Denver EAC area from September 14, 2007, to November 20, 2007 while settlement negotiations were taking place, and to allow time for an evaluation of the Denver EAC's 8-hour ozone air quality for 2005, 2006 and the first three quarters of 2007. Evaluation of the data indicated a

violation of the 8-hour ozone standard, therefore, EPA took no action to further defer the effective date of designation and Denver's nonattainment designation became effective on November 20, 2007.

In addition, the EPA plans to revoke the 1-hour ozone NAAQS for each of these EAC areas one year after the effective date of the designations for the 8-hour ozone NAAQS, and we would modify the 1-hour ozone NAAQS tables in 40 CFR part 81 to reflect the application of the revocation. This action was taken for all other areas of the country except the EACs on August 3, 2005 (70 FR 44470).

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

Currently, there are 28 areas remaining in the EAC program. Of those 28 areas, 13 had their designations deferred for the ozone 8-hour NAAQ until April 15, 2008(71 FR 69022).¹ The other 15 areas were designated attainment in April 2004, with an effective date of June 15, 2004. These areas have remained in the program in order to continue improving their local air quality. For

¹As noted previously, we also initially deferred the nonattainment designation for the Denver EAC area, but the nonattainment designation for the Denver EAC area became effective November 20, 2007.

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) and September 21, 2007 (72 FR 53952). In addition, EPA's April 30, 2004, air quality designation rule (69 FR 23858) provides a description of the compact area approach, the requirements for areas participating in the compact and the impacts of the compact on those areas.

You may find copies of all State reports at <http://www.epa.gov/ttn/naaqs/ozone/eac/>.

IV. What is the Proposed Action for the 13 Early Action Compact Areas?

The 13 EAC areas with deferred designations for the 8-hour NAAQS, had to meet one final milestone which was to demonstrate attainment with the 8-hour ozone NAAQS by December 31, 2007. Each of these EAC areas met all of the earlier milestones of the EAC program and the States in which the areas are located have now submitted quality-assured data demonstrating that the areas attained the 8-hour ozone NAAQS based on air quality data from 2005, 2006 and 2007. Therefore, EPA is proposing to designate these 13

areas as attainment for the 8-hour ozone standard. Table 1 provides the 8-hour ozone design values for each of the 13 EAC areas based on the 2005-2007 air quality data.

Table 1. 8-Hour Ozone Design Values for Compact Areas Proposed to be Designated

Attainment for 8-hour Ozone NAAQS Effective April 15, 2008

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

State	Compact Area (Designated Area)	Counties proposed to be designated attainment effective April 15, 2008	8-Hour Ozone Design Value (parts per million)
EPA Region 3			
VA	Northern Shenandoah Valley Region (Frederick County, VA), adjacent to Washington, DC-MD-VA	Winchester City	0.073
		Frederick County	
VA	Roanoke Area (Roanoke, VA)	Roanoke County	0.076
		Botetourt County	
		Roanoke City	
		Salem City	
MD	Washington County (Washington County (Hagerstown, MD), adjacent to Washington, DC-MD-VA	Washington County	0.079
WV	The Eastern Pan Handle Region (Berkeley & Jefferson Counties, WV), Martinsburg area	Berkeley County	0.075
		Jefferson County	
EPA Region 4			
NC	Unifour (Hickory- Morganton-Lenoir, NC)	Catawba County	0.078
		Alexander County	
		Burke County (part)	
		Caldwell County (part)	
NC	Triad (Greensboro-Winston- Salem-High Point, NC)	Randolph County	0.083
		Forsyth County	
		Davie County	
		Alamance County	
		Caswell County	
		Davidson County	
		Guilford County	
Rockingham County			

NC	Cumberland County (Fayetteville, NC)	Cumberland County	0.082
SC	Appalachian - A (Greenville-Spartanburg-Anderson, SC)	Spartanburg County	0.083
		Greenville County	
		Anderson County	
SC	Central Midlands - I Columbia area	Richland County (part)	0.082
		Lexington County (part)	
TN/ GA	Chattanooga (Chattanooga, TN-GA)	Hamilton County, TN	0.084
		Meigs County, TN	
		Catoosa County, GA	
TN	Nashville (Nashville, TN)	Davidson County	0.084
		Rutherford County	
		Williamson County	
		Wilson County	
		Sumner County	
TN	Johnson City-Kingsport-Bristol Area (TN portion only)	Sullivan Co, TN	0.083
		Hawkins County, TN	
EPA Region 6			
TX	San Antonio	Bexar County	0.082
		Comal County	
		Guadalupe County	

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 proposed 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 proposed rule will not impose any requirements on small entities.

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 proposed 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 one year. Thus, this proposed 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 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. 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, E.O. 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and confined governments, EPA specifically solicits comment on this propose 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 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. Thus Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comments on this proposed rule from tribal officials.

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 proposed 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. The EAC program has provided cleaner air sooner than required under the CAA to these communities. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to ozone.

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

This proposed 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 proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any VCS. EPA welcomes comments on this aspect of the proposed rulemaking and specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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 proposed 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.

LIST OF SUBJECTS in 40 CFR PART 81

Environmental protection, Air pollution control.

AUTHORITY: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C.
7501-7511f; 42 U.S.C. 7601(a)(1).

Dated:

Stephen L. Johnson,
Administrator.