

involving a single ignition and no more than 8 ounces of accelerant to a maximum of 300 cubic feet of records destroyed by fire. Section 1228.242 specifies how to document compliance with this requirement.

■ 7. Amend § 1228.232 by revising the introductory text of paragraph (b) and paragraph (c) to read:

§ 1228.232 What are the requirements for environmental controls for records storage facilities?

\* \* \* \* \*

(b) *Nontextual temporary records.* Nontextual temporary records, including microforms and audiovisual and electronic records, must be stored in records storage space that is designed to preserve them for their full retention period. New records storage facilities that store nontextual temporary records must meet the requirements in this paragraph (b) beginning on September 28, 2005. Existing records storage facilities that store nontextual temporary records must meet the requirements in this paragraph (b) no later than October 1, 2009. At a minimum, nontextual temporary records must be stored in records storage space that meets the requirements for medium term storage set by the appropriate standard in this paragraph (b). In general, medium term conditions as defined by these standards are those that will ensure the preservation of the materials for at least 10 years with little information degradation or loss. Records may continue to be usable for longer than 10 years when stored under these conditions, but with an increasing risk of information loss or degradation with longer times. If temporary records require retention longer than 10 years, better storage conditions (cooler and drier) than those specified for medium term storage will be needed to maintain the usability of these records. The applicable standards are:

\* \* \* \* \*

(c) *Paper-based permanent, unscheduled and sample/select records.* Paper-based permanent, unscheduled, and sample/select records must be stored in records storage space that provides 24 hour/365 days per year air conditioning (temperature, humidity, and air exchange) equivalent to that required for office space. See ASHRAE Standard 55-1992, Thermal Environmental Conditions for Human Occupancy, and ASHRAE Standard 62-1989, Ventilation for Acceptable Indoor Air Quality, for specific requirements. New records storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet

the requirement in this paragraph (c) beginning on September 28, 2005. Existing storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet the requirement in this paragraph (c) no later than October 1, 2009.

\* \* \* \* \*

■ 8. Amend § 1228.236 by revising paragraph (a)(2) to read:

§ 1228.236 How does an agency request a waiver from a requirement in this subpart?

(a) \* \* \* (2) Existing agency records centers that met the NARA standards in effect prior to January 3, 2000, but do not meet a new standard required to be in place on September 28, 2005; and

\* \* \* \* \*

■ 9. Amend § 1228.240 by revising paragraph (c) to read as follows:

§ 1228.240 How does an agency request authority to establish or relocate records storage facilities?

\* \* \* \* \*

(c) *Contents of requests for agency records centers.* Requests for authority to establish or relocate an agency records center, or to use an agency records center operated by another agency, must be submitted in writing to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. The request must identify the specific facility and, for requests to establish or relocate the agency's own records center, document compliance with the standards in this subpart. Documentation requirements for § 1228.230(s) are specified in § 1228.242.

\* \* \* \* \*

■ 10. Amend § 1228.242 by revising paragraphs (a)(2) and (a)(3) to read:

§ 1228.242 What does an agency have to do to certify a fire-safety detection and suppression system?

(a) \* \* \* (2) A report of the results of independent live fire testing (Factory Mutual, Underwriters Laboratories or Southwest Research Institute); or (3) A report under seal of a licensed fire protection engineer that: (i) Describes the design intent of the fire suppression system to limit the maximum anticipated loss in any single fire event involving a single ignition and no more than 8 fluid ounces of petroleum-type hydrocarbon accelerant (such as, for example, heptanes or gasoline) to a maximum of 300 cubic feet of Federal records destroyed by fire. The report need not predict a maximum

single event loss at any specific number, but rather should describe the design intent of the fire suppression system. The report may make reasonable engineering and other assumptions such as that the fire department responds within XX minutes (the local fire department's average response time) and promptly commences suppression actions. In addition, any report prepared under this paragraph should assume that the accelerant is saturated in a cotton wick that is 3 inches in diameter and 6 inches long and sealed in a plastic bag and that the fire is started in an aisle at the face of a carton at floor level. Assumptions must be noted in the report;

(ii) Details the characteristics of the system; and

(iii) Describes the specific measures beyond the minimum features required by the applicable building code that have been incorporated to limit destruction of records. The report should make specific references to industry standards used in the design, such as those issued by the National Fire Protection Association, and any testing or modeling or other sources used in the design.

\* \* \* \* \*

Dated: June 29, 2005.

Allen Weinstein,

Archivist of the United States.

[FR Doc. 05-17097 Filed 8-26-05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OAR-2003-0090; FRL-7959-2]

[RIN 2060-AN04]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is finalizing the extension of the deferred effective date of air quality designations for 14 areas of the country that have entered into Early Action Compacts. Early Action Compact areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. On April 30, 2004, EPA published an action designating all areas of the country for the 8-hour ozone National Ambient Air Quality Standards

(NAAQS). In the designation rule, EPA deferred the effective date of the nonattainment designation for 14 areas that had entered into Early Action Compacts until September 30, 2005. The EPA is now extending the deferred effective date of the nonattainment designation for all 14 Early Action Compact areas until December 31, 2006.

**DATES:** This final rule is effective on September 28, 2005.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID no. OAR-2003-0090 (Early Action Compacts). All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 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 website 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 C504-02, Research Triangle Park, NC 27711, phone number (919) 541-1051 or by e-mail at: [driscoll.barbara@epa.gov](mailto:driscoll.barbara@epa.gov) or Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5565 or by e-mail at: [cole.david@epa.gov](mailto:cole.david@epa.gov).

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#### I. What is the Purpose of this Document?

The purpose of this document is to finalize the extension of the deferred effective date of the 8-hour ozone nonattainment designations for 14 participants in Early Action Compacts. The new effective designation date is December 31, 2006.

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

This section discusses EPA's actions to date with respect to deferring the effective date of nonattainment designations for certain areas of the country that are participating in the Early Action Compact program. The EPA's April 30, 2004 air quality designation rule (68 FR 70108) provides a description of the compact approach, the requirements for areas participating in the program and the impacts of the program on those areas.

On December 31, 2002, we entered into compacts with 33 communities. To receive the first deferral, these Early

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

The final designation rule published April 30, 2004 (69 FR 23858) as amended June 18, 2004 (69 FR 34080), included the following actions for compact areas: deferred the effective date of nonattainment designation for 14 compact areas until September 30, 2005; detailed the progress compact areas had made toward completing their milestones; described the actions required for compact areas in order to remain eligible for a deferred effective date for a nonattainment designation; detailed EPA's schedule for taking further action to determine whether to further defer the effective date of nonattainment designations; and described the consequences for compact areas that do not meet a milestone.<sup>1</sup>

On June 8, 2005 (70 FR 33409), we proposed to extend the deferred effective date for those same 14 areas from September 30, 2005 to December 31, 2006, and provided an update on the progress the compact areas had been making.

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

Since the April 2004 designations, two EAC areas that were designated attainment for the 8-hour ozone NAAQS have withdrawn from the compact process.<sup>2</sup>

In this section, we describe the status of the Early Action Compact areas' progress toward meeting their milestones. In general, the remaining 29 compact areas have made progress toward timely completion of their milestones. A compiled list of local measures is found on EPA's website for compact areas at: <http://www.epa.gov/ttn/naaqs/ozone/eac/>. By December 31, 2004, all States with compacts were required to submit to EPA State Implementation Plan (SIP) revisions with locally adopted measures which if

<sup>1</sup> Out of 31 active compact areas, 17 were meeting the 8-hour ozone NAAQS at the time of designation in April 2004 and were designated attainment with an effective date of June 15, 2004. This final rule only addresses the 14 areas that were designated in the April 2004 rule as nonattainment with a deferred effective date of September 30, 2005.

<sup>2</sup> Haywood and Putnam Counties, TN decided to withdraw from the compact arrangement.

approved by EPA, are federally enforceable. Notices for each of the proposed SIP revisions were published in the **Federal Register** by the respective

EPA Regional Office. For each of the 14 EAC areas with a deferred nonattainment designation date of September 30, 2005, EPA has taken final

action approving the SIP revisions as meeting the EAC Protocol and EPA's EAC regulations at 40 CFR 81.300 as indicated in Table 1.

TABLE 1. REGIONAL OFFICES ISSUING FEDERAL REGISTER NOTICES ON EARLY ACTION COMPACT SIP REVISIONS

Regional Offices	States	Date SIP Revision Signed
Makeba Morris, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2187, (215) 814-2187	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	August 9, 2005
Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, 12th Floor, Atlanta, GA 30303, (404) 562-9033	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee	August 15, 2005
Rebecca Weber, Associate Director, Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665-6656	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	August 12, 2005
Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, 999 18th Street, Suite 300, Denver, CO 80202-2466, (303) 312-6005	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	August 2, 2005

*B. What is today's final action for compact areas?*

Today, we are extending the deferred effective date of the nonattainment designation for 14 compact areas. In final rulemaking actions taken by the EPA regional offices, as indicated in

Table 1, we have concluded that these 14 areas have met all required compact milestones including the December 31, 2004 submission. Because these areas have met these milestones, they are eligible for a further deferral of their nonattainment designation for the 8-hour ozone NAAQS. See 40 CFR

81.300(e)(4)(ii). We are further deferring until December 31, 2006 the effective date of the 8-hour ozone nonattainment designation for the compact area counties listed in Table 2 and are revising 40 CFR part 81 to reflect this extension.

TABLE 2. COMPACT AREAS WHICH QUALIFY FOR A DEFERRED EFFECTIVE DATE OF DECEMBER 31, 2006

NOTE: NAME OF DESIGNATED 8-HOUR OZONE NONATTAINMENT AREA IS IN PARENTHESES.

State	Compact Area (Designated Area)	Counties with designation deferred to December 31, 2006	Counties which are part of compacts and are designated unclassifiable/attainment
EPA Region 3			
VA	Northern Shenandoah Valley Region (Frederick County, VA), adjacent to Washington, DC-MD-VA	Winchester City Frederick County	
VA	Roanoke Area (Roanoke, VA)	Roanoke County Botetourt County Roanoke City Salem City	
MD	Washington County (Washington County Hagerstown, MD), adjacent to Washington, DC-MD-VA	Washington County	
WV	The Eastern Pan Handle Region (Berkeley & Jefferson Counties, WV), Martinsburg area	Berkeley County Jefferson County	
EPA Region 4			
NC	Unifour (Hickory-Morganton-Lenoir, NC)	Catawba County Alexander County Burke County (part) Caldwell County (part)	

TABLE 2. COMPACT AREAS WHICH QUALIFY FOR A DEFERRED EFFECTIVE DATE OF DECEMBER 31, 2006—Continued

NOTE: NAME OF DESIGNATED 8-HOUR OZONE NONATTAINMENT AREA IS IN PARENTHESES.

State	Compact Area (Designated Area)	Counties with designation deferred to December 31, 2006	Counties which are part of compacts and are designated unclassifiable/attainment
NC	Triad (Greensboro–Winston–Salem–High Point, NC)	Randolph County Forsyth County Davie County Alamance County Caswell County Davidson County Guilford County Rockingham County	Surry County Yadkin County Stokes County
NC	Cumberland County (Fayetteville, NC)	Cumberland County	
SC	Appalachian – A (Greenville–Spartanburg–Anderson, SC)	Spartanburg County Greenville County Anderson County	Cherokee County Pickens County Oconee County
SC	Central Midlands – I (Columbia area)	Richland County (part) Lexington County (part)	Newberry County Fairfield County
TN/GA	Chattanooga (Chattanooga, TN–GA)	Hamilton County, TN Meigs County, TN Catoosa County, GA	Marion County, TN Walker County, GA
TN	Nashville (Nashville, TN)	Davidson County Rutherford County Williamson County Wilson County Sumner County	Robertson County Cheatham County Dickson County
TN	Johnson City–Kingsport–Bristol Area (TN portion only)	Sullivan Co, TN Hawkins County, TN	Washington Co, TN Unicoi County, TN Carter County, TN Johnson County, TN
EPA Region 6			
TX	San Antonio	Bexar County Comal County Guadalupe County	Wilson County
EPA Region 8			
CO	Denver (Denver–Boulder–Greeley–Ft. Collins–Love, CO)	Denver County Boulder County (includes part of Rocky Mtn Nat. Park) Jefferson County Douglas County Broomfield Adams County Arapahoe County Larimer County (part) Weld County (part)	

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

Following promulgation of this extension, we would propose and as appropriate, promulgate a further extension of the deferred effective date until April 15, 2008, for those areas that continue to meet all compact milestones through December 31, 2006. No later than April 15, 2008, we will determine

whether the compact areas that received a deferred effective date of April 15, 2008 have attained the 8-hour ozone NAAQS by December 31, 2007, and have met all compact milestones. If the area has not attained the standard, the nonattainment designation will take effect. If the compact area has attained the standard, EPA will designate the area as attainment. Any compact area that has not attained the NAAQS and thus has an effective nonattainment designation will be subject to the full

planning requirements of title I, part D of the CAA, and the area will be required to submit a revised attainment demonstration SIP within 1 year of the effective date of designation.

*D. What comments did EPA receive on the June 8, 2005 proposal to extend the deferral of the effective date of the nonattainment designations for 14 Early Action Compact areas?*

We received a number of comments on the proposed rule to extend the

deferred effective date of the nonattainment designations for 14 Early Action Compact areas to December 31, 2006. We have responded to the significant comments in this section. There are additional comments to which we do not respond in this notice; however, all comments and responses are included in the docket for this rulemaking (OAR-2003-0090).

*Comment:* Several commenters expressed support for the compact process, the goal of clean air sooner, the incentives and flexibility the program provides for encouraging early reductions of ozone-forming pollution, and the deferred effective date of nonattainment designation. However, a number of commenters opposed the Early Action Compact program. Several of these commenters expressed concern about various legal aspects of the program, primarily the deferral of the effective date of the nonattainment designation for these areas. Although some of these commenters were supportive of the goal of proactively addressing the public health concerns associated with ozone pollution, the commenters state that the program is not authorized by the CAA. All of these commenters indicated that EPA lacks authority under the CAA to defer the effective date of a nonattainment designation. In addition, these commenters state that EPA lacks authority to enter into Early Action Compacts with areas and lacks authority to allow areas to be relieved of obligations under title I, part D of the CAA while these areas are violating the 8-hour ozone standard or are designated nonattainment for that standard. One comment submitted by several groups attached comments that the commenters had submitted on EPA's December 16, 2003, proposed rule to defer the nonattainment designation for EAC areas that had met the EAC milestones.

*Response:* We have determined that the compact program, as designed, gives local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard. The participating communities are serious in their commitment and have made good progress implementing State and local measures for controlling emissions from local sources earlier than the CAA would otherwise require. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizens groups, a number of these communities are, for the first time, cooperating on a regional basis to solve environmental problems that affect the health and welfare of their citizens. People living in these

areas realize reductions in pollution levels sooner and will enjoy the health benefits of cleaner air sooner than might otherwise occur. With respect to the commenter who attached comments that were submitted on EPA's initial proposal to defer the effective date of a nonattainment designation of EAC areas meeting compact milestones, we refer back to our response to those comments in the April 2004 designation rule (69 FR 23858).

*Comment:* One commenter disagreed with....."EPA's assessment that the proposed rule does not constitute a "significant regulatory action" (see 70 FR 33412)"..... The commenter....."believes that condition 4 of that finding has been met (raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.)"

*Response:* The Office of Management and Budget which has responsibility for implementing Executive Order 12866, has determined that the June 8, 2005 proposed rule (70 FR 33409) is not a significant regulatory action.

*Comment:* One commenter also had several very specific comments on the contents of the South Carolina SIP related to such items as maintenance and growth tracking, need to show satisfactory progress, air quality protection and growth review.

*Response:* A detailed response to these comments is included in the Response to Comments document for this rulemaking which is in the docket (OAR-2003-0090).

### III. Statutory and Executive Order Reviews

This action finalizes the extension of the deferred effective date of the nonattainment designation for 14 compact areas until December 30, 2006.

#### 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.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB 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. This final rule does not require the collection of any information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling

officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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

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

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This final rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this proposed rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not

have "Tribal implications" as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact.

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

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

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

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

#### *I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress,

through OMB, explanations when the Agency decides not to use available and applicable VCS.

This final rule does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

The EPA will encourage States that have compact areas to consider the use of such standards, where appropriate, in the development of their SIPs.

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

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

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

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 28, 2005.

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 October 28, 2005. 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: August 16, 2005.

Stephen L. Johnson, Administrator.

40 CFR Part 81 is amended as follows:

PART 81 - [Amended]

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

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

Subpart C - Section 107 Attainment Status Designations

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

81.300 Scope.

\* \* \* \* \*

(e) \* \* \* \*

(3) \* \* \* \*

(i) General. Notwithstanding clauses (i) through (iv) of section 107(d)(1)(B) of the Clean Air Act (42 U.S.C. 7407(d)(1)(B)), the Administrator shall defer until December 31, 2006 the effective date of a nonattainment designation of any area subject to a compact that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the 8-hour ozone national ambient air quality standard if the Administrator determines that the area subject to a compact has met the requirements in paragraphs (e)(2)(i) through (iii) of this section.

(ii) \* \* \*

(B) Prior to expiration of the deferred effective date on December 31, 2006, if the Administrator determines that an area or the State subject to a compact has not met either requirement in paragraphs (e)(2)(iv) and (v) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

(C) If the Administrator determines that an area subject to a compact and/or State has not met any requirement in paragraphs (e)(2)(iv) through (vi) of this

section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

\* \* \* \* \*

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

81.306 Colorado.

\* \* \* \* \*

Colorado Ozone (8-Hour Standard)

\* \* \* \* \*

2 Early Action Compact Area, effective date deferred until December 31, 2006. \* \* \* \*

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

81.311 Georgia.

\* \* \* \* \*

Georgia Ozone (8-Hour Standard)

\* \* \* \* \*

2 Early Action Compact Area, effective date deferred until December 31, 2006. \* \* \* \*

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

81.321 Maryland.

\* \* \* \* \*

Maryland Ozone (8-Hour Standard)

\* \* \* \* \*

2 Early Action Compact Area, effective date deferred until December 31, 2006. \* \* \* \*

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

81.334 North Carolina.

\* \* \* \* \*

North Carolina Ozone (8-Hour Standard)

\* \* \* \* \*

2 Early Action Compact Area, effective date deferred until December 31, 2006. \* \* \* \*

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

81.341 South Carolina.

\* \* \* \* \*

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

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until December 31, 2006.

\* \* \* \* \*

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

**§ 81.343 Tennessee.**

\* \* \* \* \*

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

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until December 31, 2006.

\* \* \* \* \*

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

**§ 81.344 Texas.**

\* \* \* \* \*

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

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until December 31, 2006.

\* \* \* \* \*

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

**§ 81.347 Virginia.**

\* \* \* \* \*

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

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until December 31, 2006.

\* \* \* \* \*

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

**§ 81.349 West Virginia.**

\* \* \* \* \*

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

\* \* \* \* \*

<sup>2</sup> Early Action Compact Area, effective date deferred until December 31, 2006.

\* \* \* \* \*

[FR Doc. 05–17038 Filed 8–26–05; 8:45 am]

BILLING CODE 6560–50–S

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 041126332–5039–02; I.D. 082305B]

**Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole in the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of yellowfin sole in the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of yellowfin sole in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 2005 total allowable catch (TAC) of yellowfin sole in the BSAI has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 24, 2005, until 2400 hrs, A.l.t., December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 TAC of yellowfin sole in the BSAI was established as 83,883 metric

tons by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the apportionment of the non-specified reserve to the yellowfin sole TAC on July 28, 2005 (70 FR 43644, July 28, 2005).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the yellowfin sole TAC in the BSAI has been reached. Therefore, NMFS is requiring that further catches of yellowfin sole in the BSAI be treated as a prohibited species in accordance with § 679.21(b).

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of yellowfin sole in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 22, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 23, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 05–17141 Filed 8–24–05; 2:52 pm]

BILLING CODE 3510–22–S