

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

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

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

A. Why Was the Compact Program Developed?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. What Are Compact Areas Required To Do?

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

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

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

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

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

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

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