

consequences associated with participating in these compacts, some of which are noted below.

1. Compacts give local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the communities control emissions from local sources earlier than the CAA would otherwise require, consistent with timelines in the Protocol.

2. If all terms of the agreement are met, EPA would defer the effective date of the nonattainment designation for compact areas.

3. People living in areas that realize reductions sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur.

4. Reductions in emissions from pollution control measures that are implemented as part of a compact are creditable toward air quality planning goals, to the extent credit is allowed by EPA guidance and the CAA.

5. Success of compacts depends on active and sustained participation by all stakeholders.

6. Compact areas (as well as non-compact areas) that are maintenance areas for the 1-hour ozone standard would still be subject to transportation conformity requirements for the 1-hour standard while the maintenance plan for the area is still in force under section 175A of the CAA. (Note that EPA has proposed that when it revokes the 1-hour ozone standard, transportation conformity under the 1-hour standard would no longer apply to 1-hour maintenance areas.)

7. Compact areas in the Ozone Transport Region are still subject to nonattainment NSR in accordance with section 184(b)(2) of the CAA for so long as the 1-hour ozone NAAQS continues to apply.

8. Because they are not considered nonattainment for the 8-hour ozone NAAQS until the effective date, compact areas are not eligible for Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds for purposes of the 8-hour ozone NAAQS.

9. Compact areas have an aggressive, accelerated program of milestones to meet. If an area misses a milestone, its nonattainment designation will take effect, and as such, will be subject to all of the requirements for nonattainment areas.

VIII. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas as attaining or not attaining that NAAQS. The CAA then

specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. This proposed rule provides flexibility for areas that have entered into a compact and take early action to achieve emissions reductions necessary to attain the 8-hour ozone standard. This action proposes to defer the effective date of the nonattainment designation for these areas and would allow these areas to adopt control requirements agreed to by the affected localities.

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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the above factors applies. As such, this proposed rule was not formally submitted to OMB for 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.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a 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 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. Rather, this rule would defer the 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. In addition, States and local areas that have entered into compacts with EPA have the flexibility to decide what to regulate in their communities.

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