ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MO 061–0161b; IL 187–3; FRL–6955–5]

Proposed Effective Date Modification for the Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed delay of effective date.

SUMMARY: EPA is proposing to delay the effective date of its final rule entitled ''Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois,'' published elsewhere in today's **Federal Register**, until June 29, 2001. As promulgated, the rule states that it is effective 60 days after publication in the **Federal Register**. EPA believes that the proposed additional delay of the effective date until June 29, 2001, is necessary, in part, to allow regulated entities in the St. Louis area to prepare for compliance with the new requirements that would become applicable in the area upon the effective date of the nonattainment determination and reclassification.

During the pre-effective date period, EPA would also continue to work on completing a separate rulemaking on the issue of whether St. Louis should be granted an extension of its attainment date pursuant to EPA's Guidance on ''Extension of Air Quality Attainment Dates for Downwind Transport Areas,'' published March 25, 1999, and continue to retain a moderate classification. In this action, EPA is also stating its intent to propose to withdraw its final March 12 determination of nonattainment and notice of reclassification, if EPA approves an attainment date extension before the effective date of that final action.

In an order issued January 29, 2001, and amended on February 14, 2001, the United States District Court for the District of Columbia directed EPA to determine, by March 12, 2001, whether the St. Louis area had attained the applicable ozone standard under the Clean Air Act (CAA), and ordered EPA to publish any required notice resulting from its determination by March 20, 2001. *Sierra Club* v. *Whitman,* No. 98–2733. On March 8, 2001, in its Motion Re: Alternative Planned Response to Comply with the Court's Order of January 29, 2001, EPA informed the Court of its planned course of action to comply with the Court's Order, should the Court deny a request for a stay filed by Intervenors. EPA's plans included issuing today's ''Determination of Nonattainment as of November 15, 1996, and Reclassification.'' EPA also advised the Court that it intended to propose to postpone the effective date of that determination and reclassification until June 29, 2001, and of EPA's intent to withdraw the determination and reclassification if EPA approves an attainment date extension for the St. Louis area before the determination becomes effective.

The Court, in a limited review to determine whether EPA's planned course of action would contravene the Court's order, indicated that EPA, by signing a determination by March 12 and publishing Notice by March 20, would comply with the Court's Order. The Court noted that it lacked jurisdiction to assess the propriety of the remainder of EPA's planned course of action.

DATES: Comments must be received on or before April 18, 2001.

ADDRESSES: Written comments should be mailed to Royan W. Teter, Air Planning and Development Branch, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101; and Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter, EPA Region 7, (913) 551–7609; or Edward Doty, EPA Region 5, (312) 886–6057.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we, us, or our'' is used, we mean EPA.

In November 1998, the Sierra Club and the Missouri Coalition for the Environment filed a complaint in the United States District Court for the District of Columbia against EPA (*Sierra Club* v. *Browner* (now *Sierra Club* v. *Whitman*), No 98–2733 (CKK)), alleging, in part, that EPA failed to publish a determination of nonattainment and notice of the reclassification of the St. Louis area to ''serious'' nonattainment, and alleging failure of EPA to act on a number of State Implementation Plan (SIP) revisions submitted by Missouri to control ozone precursors. The states of Missouri and Illinois and a group of Missouri industry associations were intervenors in the litigation.

With respect to the reclassification issue, EPA acknowledged that it had a duty to make a determination on the attainment status of the area by May 15, 1997, and that it had not made a determination. EPA asked the Court for a schedule for a final resolution that would allow the states to make the necessary submissions, so that EPA could determine whether the area could qualify for an attainment date extension.

The Court dismissed all of the claims relating to failure of EPA to act on the Missouri SIP revisions. On the reclassification issue, the Court in an opinion and Order dated January 29, 2001, rejected the Sierra Club request that the Court order EPA to publish a particular determination (that the area failed to attain the standard) and rejected Sierra Club's request to make the determination retroactive to May 1997. However, the Court noted that the Act required that EPA make an attainment determination. The Court also noted that a ''determination of nonattainment'' would result in a higher classification by operation of law.

The Court stated that it would require EPA to ''reach its statutorily required determination promptly,'' and ordered EPA to make its determination, no later than March 12, 2001, ''whether the St. Louis NAA attained the requisite ozone standards.'' It also ordered EPA to publish a notice of the determination, as required by the Act, by March 12, 2001. EPA subsequently requested and the Court granted an extension to March 20, 2001, for publishing notice. Court Order of February 14, 2001. Our rule entitled ''Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois,'' is published elsewhere in today's **Federal Register** in response to the Court's Order.

EPA believes that the proposed additional delay of the effective date is necessary to allow regulated entities in St. Louis a period of time to prepare for the new requirements that are applicable to serious nonattainment areas. For example, on the effective date of the reclassification to serious, under the Illinois SIP, the cutoff for ''major sources'' will be reduced from 100 tons of emissions on an annual basis to 50 tons. Thus, a number of facilities with volatile organic compound or nitrogen oxide emission levels between 50 and 100 tons per year may become subject to major source requirements for the first time.[1] EPA believes that sources possibly subject to these new requirements should have additional

[1] See section 182(c) in conjunction with section 182(f) of the Act for the serious area major source thresholds for these pollutants.

time to prepare for the impact of these requirements.

EPA will continue to work on completing a separate rulemaking on the issue of whether St. Louis should be granted an extension of its attainment date pursuant to EPA's ''Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas,'' 64 FR 14441 (March 25, 1999), and remain classified as a moderate nonattainment area. If EPA takes final action to delay the effective date for the nonattainment determination, EPA could be in a position to take final action to approve the extended attainment date for St. Louis before the nonattainment determination becomes effective. Section 181(b)(2)(A) of the Act requires that EPA determine attainment within six months of the attainment date. If the attainment date were extended, there would be a new deadline for the determination that would arise only in the future. *See* Guidance. Thus, if the attainment date were extended, EPA's obligation to determine attainment would not yet have occurred. If EPA were to extend the attainment date for St. Louis, EPA would withdraw the published nonattainment determination and the consequent reclassification, which would not yet have gone into effect.

EPA is seeking public comment on whether it would be appropriate to delay the effective date of its final rulemaking until June 29, 2001, in order to allow sources to prepare to meet new requirements and also allow EPA and the states to complete rulemaking actions regarding the transport-based attainment date extension. In light of the fact that Missouri has submitted its final SIP submissions and Illinois has made draft submissions and is expected to submit its final SIP submissions by the end of April, EPA believes that it will be able to complete rulemaking on the attainment date extension request by June 29, 2001. The public comment period on delaying the effective date will run for 30 days after publication of this document.

As noted above, in an order issued January 29, 2001, and amended on February 14, 2001, the United States District Court for the District of Columbia directed EPA to determine, by March 12, 2001, whether the St. Louis area had attained the applicable ozone standard under the CAA, and ordered EPA to publish any required notice resulting from its determination by March 20, 2001. *Sierra Club* v. *Whitman,* No. 98–2733. On March 8, 2001, in its Motion Re: Alternative Planned Response to Comply with the Court's Order of January 29, 2001, EPA informed the Court of its planned course of action to comply with the Court's Order, should the Court deny a request for a stay filed by Intervenors. This course of action included issuing today's rule of the ''Determination of Nonattainment as of November 15, 1996, and Reclassification.'' EPA also advised the Court that it intended to propose to postpone the effective date of that Determination and Reclassification until June 29, 2001, and of EPA's intent to withdraw the determination and reclassification if EPA approves an attainment date extension for the St. Louis area before the determination becomes effective.

The Court, in a limited review to determine whether EPA's planned course of action would contravene the Court's order, indicated that EPA, by signing a determination by March 12 and publishing the required Notice by March 20, would comply with the Court's Order. The Court noted that it lacked jurisdiction to assess the propriety of the remainder of EPA's planned course of action.

EPA has now received Missouri's final SIP submittal which would allow it to be considered for an attainment date extension, and has also received submissions from Illinois for parallel processing. EPA expects shortly to sign a proposal with respect to these submissions, and to take final action on these submissions and an attainment date extension by June 29, 2001, the delayed effective date proposed herein. Such a course would harmonize the need to allow the Agency to fulfill its duty to take into account upwind transport, while adhering to a fixed and very near-term schedule. It would also allow EPA to apply to the St. Louis area the attainment date extension policy which EPA has applied in other areas affected by transport. Recently EPA issued three final rulemakings granting requests for attainment date extensions based on its policy in three ozone nonattainment areas: Washington, DC, Greater Connecticut, and Springfield, Massachusetts. 66 FR 586 (January 3, 2001), 66 FR 634 (January 3, 2001), 66 FR 666 (January 3, 2001). In addition, EPA has proposed granting attainment date extensions to Louisville, Kentucky, and Beaumont, Texas. 64 FR 27734 (May 21, 1999), 64 FR 12854 (April 16, 1999), 65 FR 81786 (December 27, 2000).

Proposed Action

For the reasons stated above, EPA proposes to delay to June 29, 2001, the effective date of the final rule entitled ''Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois,'' published elsewhere in today's **Federal Register**.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''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.''

The Agency has determined that this proposed effective date modification would result in none of the effects identified in section 3(f) of the Executive Order. This proposal would merely delay the effective date of EPA's determination of nonattainment and would not impose any new requirements on any sectors of the economy, or on state, local, or tribal governments or communities.

B. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks 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 a 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 action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

C. Executive Order 13175

On November 6, 2000, the President issued Executive Order 13175 (65 FR

67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. This proposal does not affect the communities of Indian tribal governments. Accordingly, the requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposal to delay the effective date of EPA's nonattainment determination does not create any new requirements. Instead, this rulemaking would only delay the effective date of a factual determination, and would not regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's proposal would not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed above, that the delay of the effective date of a determination of nonattainment would not constitute a Federal mandate, as defined in section 101 of the UMRA, because it would not impose an enforceable duty on any entity.

F. Executive Order 13132

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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This proposed delay of the effective date of a nonattainment determination would 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 (64 FR 43255, August 10, 1999), because this action does not impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed action.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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 voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Dated: March 12, 2001.

William Rice,

Acting Regional Administrator, Region 7.

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