

US EPA ARCHIVE DOCUMENT

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2003-0090; FRL-8206-7]

Final 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: Proposed rule.

SUMMARY: The EPA is proposing a final extension of the deferred effective date of air quality designations for certain 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 a notice 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. The current effective date of the nonattainment designation for these areas is December 31, 2006. The EPA is now proposing to extend the deferral of the effective date for all 14 Early Action compact areas until April 15, 2008.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-

2003-0090, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: A-and-R-Docket@epa.gov, Attention Docket ID No. EPA-HQ-OAR-2003-0090.
- Fax: Fax your comments to (202) 566-1741, Attention Docket ID. No. EPA-HQ-OAR-2003-0090.
- Mail: Docket EPA-HQ-OAR-2003-0090, 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 B102, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2003-0090. 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-2003-0090. 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 B102, 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.

NOTE: The EPA Docket Center suffered damage due to flooding during the last week of

June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's Federal Register notice at 71 FR 38147 (July 5, 2006) or the EPA website at www.epa.gov/epahome/dockets.htm for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, 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. Environmental Protection Agency, Mail Code C304-05, Research Triangle Park, NC 27711, phone number (919) 541-5565 or by e-mail at: cole.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies only to the 14 areas that entered into Early Action compacts and for which the effective date of the nonattainment designation was deferred. A list of these areas is included in Table 1 below.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part of all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, Mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that include information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.
2. Tips for Preparing Your Comments. When submitting comments, remember to:
 - Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
 - Follow directions – The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
 - Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
 - Describe any assumptions and provide any technical information and/or data that you used.
 - If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
 - Provide specific examples to illustrate your concerns, and suggest

alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where Should I Send an Additional Copy of My Comments?

In addition, please send a copy of your comments to: Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards by one of the means listed:

- E-Mail: driscoll.barbara@epa.gov.
- Fax: (919) 541-5489, Attention: Barbara Driscoll.
- Mail: Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code: C539-04, Research Triangle Park, NC 27711.
- Hand Delivery: Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Room: C541C, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709.

The information presented in this preamble is organized as follows.

OUTLINE

The following is an outline of the preamble.

- I. General Information
 - A. Does this Action Apply to Me?
 - B. What Should I Consider as I Prepare My Comments for EPA?
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- II. What is the Purpose of this Document?

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

- A. What progress are compact areas making toward completing their milestones?
- B. What is this proposed action for compact areas?
- C. What is EPA's schedule for taking further action to continue to defer the effective date of nonattainment designation for compact areas?

IV. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- 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 to extend the deferral of the effective date of the 8-hour ozone nonattainment designations for 14 participants in Early Action Compacts. Currently, the effective designation date is December 31, 2006, and this proposal would extend that date to April 15, 2008.

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

This section discusses EPA's actions to date with respect to certain areas of the country that are participating in the Early Action Compact program. 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. The final designation rule published April 30, 2004, (69 FR 23864), 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 final action required for compact areas; detailed EPA's schedule for taking further action to extend the deferral of the effective date of nonattainment designations, if appropriate; and described the consequences for compact areas that do not meet a milestone. In the April 2004, action, we also discussed three compact areas which did not meet the March 31, 2004, milestone; Knoxville, Memphis, and Chattanooga, Tennessee. Knoxville and Memphis were designated nonattainment effective June 15, 2004. Chattanooga was later determined to have met the March 31, 2004, milestone, and we deferred the designation date until September 30, 2005,(69 FR 34080). This brought the number of participating compact areas to 31. Since then 2 additional areas, Haywood and Putnam Counties, Tennessee have withdrawn from the program.

On August 29, 2005, we published a final rule extending the deferred effective date of designation from September 30, 2005, to December 31, 2006, for the same 14 compact areas. In order to receive the second deferral, Early Action Compact areas needed to submit a State Implementation Plan with locally adopted measures by December 31, 2004. The EPA approved the SIP revisions as meeting the EAC Protocol and EPA's EAC regulations at 40 CFR 81.300, and these approvals were the basis for extending the deferred effective date until December 31, 2006. Information on local measures, SIP submittals and background on the Early Action Compact program may be found on EPA's website at://www.epa.gov/ttn/naaqs/ozone/eac/.

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

In general, the remaining 29 compact areas have made satisfactory progress toward timely completion of their milestones. All compact areas were required to submit two progress reports, one by December 30, 2005, and the other by June 30, 2006. In these progress reports, the States provided information on progress towards implementing local control measures that were incorporated in their SIPs. Each of the EAC areas submitted these reports, and after review by EPA, all were determined to be in compliance with the requirements of the EAC Protocol and the individual State Implementation Plans. Progress reports for each area are posted at <http://www.epa.gov/ttn/naaqs/ozone/eac/>.

The EAC areas have one remaining milestone which is to demonstrate attainment with the 8-hour ozone NAAQS by December 31, 2007.

B. What is this proposed action for compact areas?

Today, we are proposing to extend the deferred effective date of the nonattainment designation for the 14 compact areas. These 14 areas have met all compact milestones through the June 30, 2006, submission. We are proposing to extend until April 15, 2008, the deferral of the effective date of the 8-hour ozone nonattainment designation for the compact area counties listed in Table 1. If this extension is finalized, we will revise 40 CFR part 81 in the final rule to reflect this extension.

Table 1. Compact Areas Which Qualify for a Deferred Effective Date of April 15, 2008

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

State	Compact Area (Designated Area)	Counties with designation deferred to April 15, 2008	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)	
NC	Triad (Greensboro-Winston- Salem-High Point, NC)	Randolph County	Surry County
		Forsyth County	Yadkin County
		Davie County	Stokes County
		Alamance County	
		Caswell County	
		Davidson County	
		Guilford County	
		Rockingham County	
NC	Cumberland County (Fayetteville, NC)	Cumberland County	
SC	Appalachian - A (Greenville-Spartanburg- Anderson, SC)	Spartanburg County	Cherokee County
		Greenville County	Pickens County
		Anderson County	Oconee County
SC	Central Midlands - I	Richland County (part)	Newberry County
		Lexington County (part)	Fairfield County

	Columbia area		
TN/GA	Chattanooga (Chattanooga, TN-GA)	Hamilton County, TN	Marion County, TN
		Meigs County, TN	Walker County, GA
		Catoosa County, GA	
TN	Nashville (Nashville, TN)	Davidson County	Robertson County
		Rutherford County	Cheatham County
		Williamson County	Dickson County
		Wilson County	
		Sumner County	
TN	Johnson City-Kingsport-Bristol Area (TN portion only)	Sullivan Co, TN	Washington Co, TN
		Hawkins County, TN	Unicoi County, TN
			Carter County, TN
			Johnson County, TN
EPA Region 6			
TX	San Antonio	Bexar County	Wilson County
		Comal County	
		Guadalupe 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 continue to defer the effective date of nonattainment designation for compact areas?

With this action, we are proposing to extend the deferred effective date of the nonattainment designation for compact areas which have met their obligations through April 15, 2008. No later than December 31, 2007, each area must attain the 8-hour ozone

NAAQS. If the area has attained the standard by December 31, 2007, EPA will withdraw the deferred nonattainment designation and designate the area as attainment. If the area fails to attain by this date, the nonattainment designation will become effective on April 15, 2008. For any area for which the nonattainment designation becomes effective, pursuant to the terms of the compact, the State must submit a revised attainment demonstration SIP for the nonattainment area by December 31, 2008.

IV. Statutory and Executive Order Reviews

This action proposes to extend the deferral of the effective date of the nonattainment designation for 14 compact areas until April 15, 2008.

A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

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 proposal 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 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 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 extend the deferral of 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. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Today's rule defers to a later date requirements associated with nonattainment area status for areas that have voluntarily entered into Early Action Compacts with EPA. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed rule 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.”¹¹

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, Executive Order 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 local governments, EPA specifically solicits comment on this proposed 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 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.

The EPA specifically solicits additional comment 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 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 proposal 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 proposed rule is not a “significant energy action” as defined in Executive Order 13211, “Actions That Significantly Affect Energy Supply, Distribution, or Use,” (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the

supply, distribution, or use of energy.

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 rulemaking 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 proposed 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.

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 3, 2006.

Stephen L. Johnson,
Administrator.

40 CFR Part 81 is proposed to be 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) 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 April 15, 2008, 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 (v) of this section.

(ii) * * *

(B) Prior to expiration of the deferred effective date on April 15, 2008, if the Administrator determines that an area or the State subject to a compact has not met the requirement in paragraph (e)(2)(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.

* * * * *