

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OAR-2003-0090; FRL-]

[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: Proposed Rule.

SUMMARY: The EPA is proposing to extend the deferral of the 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 is September 30, 2005. The EPA is now proposing to extend the deferral of the effective date for all 14 Early Action compact areas until December 31, 2006.

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. OAR-2003-0090, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Website: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: Comments may be sent by electronic mail (e-mail) to A-and-R-Docket@epa.gov, Attention Docket ID No. OAR-2003-0090.
- Fax: Fax your comments to: 202-566-1741, Attention Docket ID No. OAR-2003-0090.
- Mail: Send your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. OAR-2003-0090.
- Hand Delivery: Air and Radiation Docket, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room: B102, Washington, DC 20004, Attention Docket ID No. 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. 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 <http://www.epa.gov/edocket>, 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 EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, 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 EDOCKET or 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 and 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 additional instructions on submitting comments, go to Supplementary Information, Part I - General Information.

Docket: 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., 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 OAR 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 OAR Docket is (202) 566-1742.

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 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.

SUPPLEMENTARY INFORMATION:

I. General Information

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) 541-0824, Attention: Barbara Driscoll.
- Mail: Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code: C504-02, Research Triangle Park, NC 27711.
- Hand Delivery: Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709.

OUTLINE

The following is an outline of the preamble.

I. General Information

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

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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 September 30, 2005, and this proposal would extend that date to December 31, 2006.

III. 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 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. Table 1 describes the milestones and submissions that compact areas are required to complete to continue eligibility for a deferred effective

date of nonattainment designation for the 8-hour ozone standard.

Table 1. Early Action Compact Milestones

Submittal Date	Compact Milestone
December 31, 2002	Submit Compact for EPA signature
June 16, 2003	Submit preliminary list and description of potential local control measures under consideration
March 31, 2004	Submit complete local plan to State (includes specific, quantified and permanent control measures to be adopted)
December 31, 2004	State submits adopted local measures to EPA as a SIP revision that, when approved, will be federally enforceable
2005 Ozone Season (or no later than December 31, 2005)	Implement SIP control measures
June 30, 2006	State reports on implementation of measures and assessment of air quality improvement and reductions in NO _x and VOC emissions to date
December 31, 2007	Area attains 8-hour ozone NAAQS

The final designation rule published April 30, 2004 (69 FR 23858), 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.

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

In this section, we describe the status of the Early Action Compact areas' progress toward meeting their milestones. In general, the remaining 29 compact areas¹ have made satisfactory 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 Plans (SIPs) revisions with locally adopted measures which if approved by EPA, are federally

¹Haywood and Putnam Counties decided to withdraw from the compact arrangement.

enforceable. Notices for each of the proposed SIP revisions will be published in the Federal Register by the respective EPA Regional Office as indicated in Table 2.

Table 2. Regional Offices Issuing Federal Register Notices on Early Action Compacts

Regional Offices	States
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
Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, 12 th Floor, Atlanta, GA 30303, (404) 562-9033	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee
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
Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, 999 18 th Street, Suite 300, Denver, CO 80202-2466, (303) 312-6005	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

B. What is today's 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 December 31, 2004 submission. We are extending until December 31, 2006 the deferral of the effective date of the 8-hour ozone nonattainment designation for the compact area counties listed in Table 3 and are revising 40 CFR part 81 in the final rule to reflect this extension.

Table 3. 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			

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	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 Columbia area	Richland County (part)	Newberry County
		Lexington County (part)	Fairfield County
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			

State	Compact Area (Designated Area)	Counties with designation deferred to December 31, 2006	Counties which are part of compacts and are designated unclassifiable/ attainment
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 December 31, 2006. Provided the extension is promulgated as proposed, we would propose and as appropriate, promulgate a further extension of the deferred effective date until December 31, 2007, for those areas that continue to meet all compact milestones through December 31, 2006. Before December 31, 2007, we intend to determine whether the compact areas that received the technical extension have attained the 8-hour ozone NAAQS and have met all compact milestones. By April 2008, we will issue our determination. If the area has

not attained the standard, the nonattainment designation will take effect. If the compact area has attained the standard, EPA will issue an attainment designation for the area. Any compact area that has not attained the NAAQS and has an effective nonattainment designation will be subject to 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.

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 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 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.

The EPA has determined that this 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 proposal, EPA is deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us. 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.”

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.

Extension of the Deferred Effective Date for Compacts

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LIST OF SUBJECTS in 40 CFR Part 81

Air pollution control, Environmental protection.

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:

Stephen L. Johnson
Administrator

Subpart C - Section 107 Attainment Status Designations**PART 81 - [Amended]**

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

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

2. Section 81.300 is amended by revising paragraph (e) (3) (i) to read as follows:

§81.300 Scope

(3) What action shall the Administrator take to promulgate designations for an Early Action Compact area 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?

(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.

* * * * *

(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), 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)-(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.

* * * * *