

invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, from further environmental documentation.

We have considered the security zone access constraints around passenger vessels and have determined the public can safely transit the affected waterways outside the security zone, without significant impact on the environment.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.511.

#### § 165.511 Security Zone; Atlantic Ocean, Chesapeake & Delaware Canal, Delaware Bay, Delaware River and its tributaries.

(a) *Location.* A 500-yard radius around escorted passenger vessels in the Captain of the Port, Philadelphia zone as defined in 33 CFR 3.25–05.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) All persons or vessels operating at the minimum safe speed necessary to maintain navigation may transit within 500 yards of an escorted passenger vessel without the permission of the Captain of the Port Philadelphia, PA or designated representative while the escorted passenger vessel is in the Captain of the Port Philadelphia zone.

(3) No person or vessel may transit or remain within 100 yards of an escorted passenger vessel without the permission of the Captain of the Port Philadelphia, PA or designated representative while the passenger vessel is in the Captain of the Port Philadelphia zone.

(4) Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Captain of the Port Philadelphia, PA or designated representative and leave the security zone immediately if the Captain of the Port Philadelphia, PA or designated representative so orders.

(5) When an escorted passenger vessel approaches within 100 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within 100 yards of the passenger vessel unless it is either ordered by or given permission by the Captain of the Port, Philadelphia or designated representative to do otherwise.

(6) The Coast Guard designated representative enforcing this section can

be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(c) *Maneuver-restricted vessels.* When conditions permit, the Captain of the Port or designated representative should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within the 100 yards of the passenger vessel in order to ensure safe passage in accordance with the Navigation Rules as seen in 33 CFR chapter I, subchapters D and E; and

(2) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver that must transit via a navigable channel or waterway to pass within 100 yards of an anchored passenger vessel.

(d) *Definitions.* As used in this section—

*Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

*Escort* means assets (surface or air) with the Coast Guard insignia that accompany and protect the escorted vessel, armed with crew-served weapons that are manned and ready.

*Passenger Vessels* means vessels greater than 100 feet in length, over 100 gross tons that are authorized to carry 500 or more passengers, making voyages lasting more than 24 hours, except for ferries.

Dated: September 10, 2004.

**Jonathan D. Sarubbi,**

*Captain, U.S. Coast Guard, Captain of the Port, Philadelphia.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[OAR–2003–0083; FRL–7816–2]

#### Air Quality Classifications for the 8-Hour Ozone National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Clean Air Act (CAA) authorizes EPA to reclassify certain ozone nonattainment areas shortly after

the initial classification for such areas. In the April 30, 2004 **Federal Register** action establishing the 8-hour ozone designations and classifications, we described this reclassification process and listed criteria that we intended to use to evaluate a reclassification request. Requests to reclassify ozone nonattainment areas from moderate to marginal were submitted by the respective States for the following areas: Cass and Muskegon Counties, Michigan; Detroit, Michigan; Greensboro, North Carolina; Kent/Queen Anne Counties, Maryland; Lancaster, Pennsylvania; LaPorte, Indiana; Memphis, Arkansas/Tennessee; and Richmond, Virginia. This rule reclassifies certain areas that are designated nonattainment for the 8-hour ozone national ambient air quality standard (NAAQS).

**DATES:** *Effective Date:* This final rule is effective on November 22, 2004.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. OAR 2003-0083 (Designations). 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.*, Confidential Business Information (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 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 Office of Air and Radiation Docket and Information Center is (202) 566-1742. In addition, we have placed a copy of the rule and a variety of materials regarding designations on EPA's designation Web site at: <http://www.epa.gov/oar/oaqps/glo/designations>. Materials relevant to Early Action Compact (EAC) areas are on EPA's Web site at: [http://www.epa.gov/ttn/naaqs/ozone/eac/wl040218\\_eac\\_resources.pdf](http://www.epa.gov/ttn/naaqs/ozone/eac/wl040218_eac_resources.pdf).

**FOR FURTHER INFORMATION CONTACT:** Ms. Annie Nikbakht, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5246 or by e-mail at: [nikbakht.annie@epa.gov](mailto:nikbakht.annie@epa.gov). You may also

contact Mr. Doug Grano, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-3292 or by e-mail at: [grano.doug@epa.gov](mailto:grano.doug@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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##### I. What Is the Purpose of This Document?

The purpose of this document is to take action on requests from States to reclassify certain areas with respect to the 8-hour ground-level ozone NAAQS. The EPA is approving the requests for the following areas: Cass and Muskegon Counties, Michigan; Detroit, Michigan; Greensboro, North Carolina; Kent/Queen Anne Counties, Maryland; Lancaster, Pennsylvania; LaPorte, Indiana; Memphis, Arkansas/Tennessee; and Richmond, Virginia.

##### II. How Is Ground-Level Ozone Formed?

Ground-level ozone (sometimes referred to as smog) is formed by the reaction of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) in the atmosphere in the presence of sunlight. These two pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, including on-road and off-road motor vehicles and engines, power plants and industrial facilities, and smaller sources, collectively referred to as area sources. Ozone is predominately a summertime air pollutant. Changing weather patterns contribute to yearly differences in ozone concentrations from region to region. Ozone and the

pollutants that form ozone also can be transported into an area from pollution sources found hundreds of miles upwind.

##### III. What Are the Health Concerns Addressed by the 8-Hour Ozone Standard?

During the hot summer months, ground-level ozone reaches unhealthy levels in several parts of the country. Ozone is a significant health concern, particularly for children and people with asthma and other respiratory diseases. Ozone has also been associated with increased hospitalizations and emergency room visits for respiratory causes, school absences, and reduced activity and productivity because people are suffering from ozone-related respiratory symptoms.

Breathing ozone can trigger a variety of health problems. Ozone can irritate the respiratory system, causing coughing, throat irritation, an uncomfortable sensation in the chest, and/or pain when breathing deeply. Ozone can worsen asthma and possibly other respiratory diseases, such as bronchitis and emphysema. When ozone levels are high, more people with asthma have attacks that require a doctor's attention or the use of additional medication. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. In addition, breathing ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are particularly susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone. More detailed information on the health effects of ozone can be found at the following Web site: [http://www.epa.gov/ttn/naaqs/standards/ozone/s\\_o3\\_index.html](http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html).

##### IV. What Is the Chronology of Events Leading Up to This Rule?

In 1979, EPA promulgated the 0.12 parts per million (ppm) 1-hour ozone standard, (44 FR 8202, February 8, 1979). On July 18, 1997, we promulgated a revised ozone standard of 0.08 ppm, measured over an 8-hour period, *i.e.*, the 8-hour standard (62 FR 38856). The 8-hour NAAQS rule was challenged by numerous litigants and in

May 1999, the U.S. Court of Appeals for the DC Circuit issued a decision remanding, but not vacating, the 8-hour ozone standard. Among other things, the Court recognized that EPA is required to designate areas for any new or revised NAAQS in accordance with the CAA and addressed a number of other issues, which are not related to designations. *American Trucking Assoc. v. EPA*, 175 F.3d 1027, 1047–48, on rehearing 195 F.3d 4 (D.C. Cir., 1999). We sought review of two aspects of that decision in the U.S. Supreme Court. In February 2001, the Supreme Court upheld our authority to set the NAAQS and remanded the case back to the D.C. Circuit for disposition of issues the Court did not address in its initial decision. *Whitman v. American Trucking Assoc.*, 121 S.Ct. 903, 911–914, 916–919 (2001) (Whitman). In March 2002, the D.C. Circuit rejected all remaining challenges to the 8-hour ozone standard. *American Trucking Assoc. v. EPA*, 283 F.3d 355 (D.C. Cir., 2002).

The process for designations following promulgation of a NAAQS is contained in section 107(d)(1) of the CAA. The CAA defines “nonattainment area” in section 107(d)(1)(A)(i) as an area that is violating an ambient standard or is contributing to a nearby area that is violating the standard. If an

area meets this definition, EPA is obligated to designate the area as nonattainment.

The final rule establishing designations for all areas of the country was signed by the EPA Administrator on April 15, 2004 and published in the **Federal Register** on April 30, 2004 (69 FR 23858). That rule also sets forth the classifications for certain ozone nonattainment areas. Section 181(a) of the CAA provides that areas will be classified at the time of designation. For further information on designations and classifications, the reader should consult the April 30, 2004 rulemaking action. Classifications are discussed below.

**V. What Are the CAA Requirements for Air Quality Classifications?**

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. Both are found in title I, part D. Subpart 1 (which we refer to as “basic” nonattainment) contains general, less prescriptive, requirements for nonattainment areas. Subpart 2 (which we refer to as “classified” nonattainment) provides more specific requirements for ozone nonattainment areas.<sup>1</sup> Some areas are subject only to the provisions of subpart 1. Other areas

are subject to the provisions of subpart 2.<sup>2</sup> Subpart 2 areas are classified based on each area’s design value. Control requirements are linked to each classification. Areas with more serious ozone pollution are subject to more prescribed requirements. Under our 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour design value<sup>3</sup> if it had a 1-hour design value at or above 0.121 ppm (69 FR 23954 and 40 CFR 51.902). All other areas are covered under subpart 1.

Any area with a 1-hour ozone design value (based on the most recent 3 years of data) that meets or exceeds the statutory level of 0.121 ppm that Congress specified in Table 1 of section 181 is classified under subpart 2 and is subject to the control obligations associated with its classification.<sup>4</sup> Subpart 2 areas were classified as marginal, moderate, serious, or severe based on the area’s 8-hour design value calculated using the most recent 3 years of data.<sup>5</sup> As described in the Phase 1 implementation rule, since Table 1 is based on 1-hour design values, we promulgated in that rule a regulation translating the thresholds in Table 1 of section 181 from 1-hour values to 8-hour values. (See Table 1, below, “Classification for 8-Hour Ozone NAAQS” from 40 CFR 51.903.)

TABLE 1.—CLASSIFICATION FOR 8-HOUR OZONE NAAQS

Area class		8-hour design value (ppm ozone)	Maximum period for attainment in state plans (years after effective date of nonattainment designation for 8-hour NAAQS)
Marginal .....	from .....	0.085	3
	up to* .....	0.092	
Moderate .....	from .....	0.092	6
	up to* .....	0.107	
Serious .....	from .....	0.107	9
	up to* .....	0.120	
Severe-15 .....	from .....	0.120	15
	up to* .....	0.127	
Severe-17 .....	from .....	0.127	17
	up to* .....	0.187	
Extreme .....	equal to or above .....	0.187	20

\* But not including.

<sup>1</sup> State Implementation Plans; General Preamble for the Implementation of Title I of the CAA Amendments of 1990; Proposed Rule.” April 16, 1992 (57 FR 13498 at 13501 and 13510).

<sup>2</sup> Areas subject to subpart 2 are also subject to subpart 1 requirements that are not pre-empted by a more specific mandate under subpart 2.

<sup>3</sup> For the 1-hour ozone NAAQS, design value is defined at 40 CFR 51.900(c). For the 8-hour ozone NAAQS, design value is defined at 40 CFR 51.900(d).

<sup>4</sup> In the Phase 2 implementation rule, we will address the control obligations that apply to areas under both subpart 1 and subpart 2.

<sup>5</sup> At this time, there are no areas with design values in the extreme classification for the 8-hour ozone standard.

## VI. What Are the Requirements for Reclassifying 8-Hour Ozone Nonattainment Areas?

Under section 181(a)(4), an ozone nonattainment area may be reclassified "if an area classified under paragraph (1) (Table 1) would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based." The EPA previously described criteria to implement the section 181(a)(4) provisions in a final rule designating and classifying areas for the 1-hour ozone standard published on November 6, 1991 (56 FR 56698). As stated in that final rule, the provisions of section 181(a)(4) set out general criteria and grant the Administrator broad discretion in making or determining not to make, a reclassification. As part of the 1991 action, EPA developed more specific criteria to evaluate whether it is appropriate to reclassify a particular area. The EPA also described these criteria in the April 30, 2004 final rule. The general and specific criteria are as follows:

**General:** The EPA may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

**Request by State:** The EPA does not intend to exercise its authority to bump down areas on EPA's own initiative. Rather, EPA intends to rely on the State to submit a request for a bump down. A Tribe may also submit such a request and, in the case of a multi-state nonattainment area, all affected States must submit the reclassification request.

**Discontinuity:** A five percent reclassification must not result in an illogical or excessive discontinuity relative to surrounding areas. In particular, in light of the area-wide nature of ozone formation, a reclassification should not create a "donut hole" where an area of one classification is surrounded by areas of higher classification.

**Attainment:** Evidence should be available that the proposed area would be able to attain by the earlier date specified by the lower classification in the case of a bump down.

**Emissions reductions:** Evidence should be available that the area would be very likely to achieve the appropriate total percent emission reduction necessary in order to attain in the shorter time period for a bump down.

**Trends:** Near- and long-term trends in emissions and air quality should support a reclassification. Historical air quality data should indicate substantial air quality improvement for a bump down. Growth projections and emission trends should support a bump down. In addition, we will consider whether vehicle miles traveled and other indicators of emissions are increasing at higher than normal rates.

**Years of data:** For the 8-hour ozone standard, the 2001–2003 period is central to determining classification. Data from 2004 may be used to corroborate a bump down request but should not be the sole foundation for the bump down request.

**Limitations on Bump Downs:** An area may only be reclassified to the next lower classification. An area cannot present data from other years as justification to be reclassified to an even lower classification. In addition, section 181(a)(4) does not permit moving areas from subpart 2 into subpart 1.

In 1991, EPA approved reclassifications when the area met the first requirement (a request by the State to EPA) and at least some of the other criteria (emissions, reductions, trends, etc.). In our April 30, 2004 final rule on designations and classifications, we stated our intention to use this method and these criteria once again to evaluate reclassification requests under section 181(a)(4), with minor changes described in that action. In that action, we also described how we applied these criteria in 1991. For additional information, see section 5, "Areas requesting a 5% downshift per § 181(a)(4) and EPA's response to those requests," of the Technical Support Document, October 1991, for the 1991 rule. [Docket A–90–42A.]

The April 30, 2004 action invited States to submit the reclassification requests within 30 days of the effective date of the designations and classifications. The effective date was June 15 which means that reclassification requests were to be submitted by July 15, 2004. This relatively short timeframe is necessary because section 181(a)(4) only authorizes the Administrator to make such reclassifications within 90 days after the initial classification, September 15, 2004.

As described in the April 30, 2004 action, an ozone nonattainment area may also request reclassification under section 181(a)(4) to the next higher classification. While no State requested a reclassification upward during this time period, EPA notes that a State may make a request for a higher

classification at any time under section 181(b)(3). This provision directs EPA to grant a State's request for a higher classification and to publish notice of the request and EPA's approval.

## VII. What Reclassification Requests Did EPA Receive and What Action Is EPA Taking on the Requests?

This section describes each reclassification request received by EPA and the results of EPA's evaluation of each request. As described below, EPA evaluated the requests with respect to the criteria described in section IV of this notice. More detailed information is available in EPA's Technical Support Document for Five Percent Reclassifications, September 2004, which contains the requests, supporting documentation, and EPA's evaluation.

### Cass County, Michigan

The EPA designated this area as a moderate ozone nonattainment on April 15, 2004 based on its 8-hour ozone value of 93 parts per billion (ppb). On July 15, 2004 the Michigan Department of Environmental Quality submitted a request to reclassify Cass County from moderate ozone nonattainment to marginal ozone nonattainment. Cass County has small population and very low emissions. Reclassification to marginal will not result in a discontinuity since all of the counties immediately bordering Cass County are either designated as attainment or are subpart 1 nonattainment.

The Lake Michigan Air Directors Consortium (LADCo) used modeling results performed to support the 1-hour ozone attainment demonstration for the Lake Michigan area and applied 8-hour ozone metrics. As noted in Michigan's petition, the LADCo modeling was designed to assess 1-hour ozone and, as such, there are some limitations with using it to assess 8-hour ozone. On the other hand, it should be noted that three of the four modeled episodes are representative periods for high 8-hour ozone and basecase model performance for 8-hour ozone was found to be as good as (or better than) that for 1-hour ozone. The local scale LADCo modeling indicates that Cass County will be in attainment (81 ppb) in 2007. Additionally, regional scale modeling from the proposed Clean Air Interstate Rule (CAIR) indicates the area will be in attainment (83 ppb) in 2010.

The emissions trend is expected to significantly decrease due to the implementation of various regional rules, including the NO<sub>x</sub> SIP Call (63 FR 57356) and rules contained in 1-hour ozone attainment plans in the Lake Michigan area. The trend in the 4th

highest values for ozone from 2002, 2003 and 2004 show a decrease from 103 ppb, to 89 ppb and, 74 ppb, respectively. Further, it can be expected that ozone values will continue at these lower levels due to the implementation of national and regional rules.

In summary, the following factors support the request for reclassification to marginal for Cass County: The design value of 93 ppb meets our criteria to qualify for consideration of bump down, local and regional modeling analyses indicate air quality will be improving over the next several years and support attainment by the marginal area attainment date, a short term trends analysis shows ozone values decreasing, and additional reductions from regional and national regulations will continue this trend in lowering ambient ozone values. Thus, the reclassification request for Cass County meets all of the criteria (request, discontinuity, attainment, emission reductions, trends, and data) EPA established (69 FR 23863). Therefore, EPA is approving the reclassification request for Cass County.

#### *Detroit-Ann Arbor, Michigan*

The EPA designated this area as moderate on April 15, 2004 due to 8-hour values (design value is 97 ppb). On July 15, 2004, the Michigan Department of Environmental Quality (MDEQ) submitted a request to reclassify Detroit-Ann Arbor (Southeast Michigan) area from moderate to marginal ozone nonattainment. The Southeast Michigan Council of Governments (SEMCoG) is the lead local planning agency for the Detroit-Ann Arbor area. The MDEQ and SEMCoG worked jointly to prepare the reclassification request. Reclassification will not create a discontinuity since all adjacent nonattainment areas to the Detroit-Ann Arbor area are subpart 1 nonattainment.

Under section 181(a)(4), an ozone nonattainment area may be reclassified "if an area classified under paragraph (1) (Table 1) would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based." In the April 30, 2004 notice, we indicated that an area with a moderate design value of 96 ppb (or less) would be eligible to request a bump down because five percent less than 96 ppb is 91 ppb, a marginal design value. In their petition, Michigan requested EPA to use a rounding convention that would allow the "5 percent" calculation to be a factor of up to 5.49 percent. After reviewing the methodology for handling of percentages in EPA's "Guideline on Data Handling Conventions For the 8-

Hour Ozone NAAQS" (December 1998), EPA believes values up to 5.4% are acceptable for the bump down calculation. The Guideline indicates percent values are rounded up for the purpose of determining data completeness (specifically the Guideline states, 74.5% is 75% and 89.5 is 90%). Since there is nothing in the Guideline to suggest this percentage rounding convention is inappropriate for other calculations involving ambient air quality data, EPA believes it is acceptable for the bump down calculation. Using 0.054 as 5% and 97 ppb (moderate) as the design value, then  $(0.054) * 97 = 91.8$ , which is a marginal value. Thus, the area is eligible to request a bump down.

Modeling by LADCo to support the 1-hour ozone attainment demonstration for the Lake Michigan area was applied to 8-hour ozone metrics. This modeling indicates that the Detroit-Ann Arbor area may be very close to attainment (85 ppb) in 2007. However, as noted in Michigan's petition, the LADCO subregional modeling was designed to assess 1-hour ozone and, as such, there are some limitations with using it to assess 8-hour ozone. For example, the episodes and modeling domain were selected for the Lake Michigan region and may not accurately represent other cities in the modeling domain, such as Detroit. On the other hand, it should be noted that three of the four modeled episodes are representative periods for high 8-hour ozone and basecase model performance for 8-hour ozone was found to be as good as (or better than) that for 1-hour ozone. Additional, regional scale, CAIR modeling (January 2004 proposal) indicates the area will be in attainment (84 ppb) by 2010. The CAIR modeling, however, was not designed to provide results for years prior to 2010. In summary, EPA believes the LADCo and CAIR modeling analyses are not conclusive with respect to the area's attainment status in 2007. Although neither analysis is as comprehensive an assessment as would be expected with a SIP attainment demonstration, they do provide support for a decision to reclassify the area. Both modeling analyses indicate air quality will be improving over the next several years. Further decreases can be expected once MDEQ and SEMCoG have selected control measures for the area and these measures are implemented.

Emissions reductions are already occurring in various sectors throughout the area. VOC and NO<sub>x</sub> from on-road mobile sources will decline by 40% and 37%, respectively, between 2002 and 2007, even after accounting for increasing levels of travel. This trend

will continue to 2010, reaching reductions of 54% for both pollutants. Point sources' emissions of NO<sub>x</sub> will decline from implementation of the NO<sub>x</sub> SIP Call between 2004 and 2007. Additionally, MDEQ and SEMCoG have committed to evaluating a list of measures including vehicle inspection and maintenance, lower emitting fuels, degreasing, architectural and industrial maintenance coatings, consumer/commercial products, tighter VOC RACT rules, and gas can replacement. The process for choosing appropriate control measures for the area will be completed by June 2005. MDEQ and SEMCoG have also committed to an aggressive schedule to implement controls that will help the area attain by 2007.

While a long-term trends analysis for the Detroit-Ann Arbor area does not show a declining trend in ozone values, that can be attributed to the abnormally high values experienced in the area in June 2003. The maximum concentration in 2004, to date, is 83 ppb, which may mark the beginning of at least a short term air quality trend downward. It can be expected that ozone values will decrease due to the declines in NO<sub>x</sub> and VOC emissions described in the preceding paragraph.

In summary, the following factors support the request for downward revision to the 8-hour ozone classification for Detroit-Ann Arbor area: the design value of 97 ppb meets our criteria to qualify for consideration of bump down, local and regional modeling analyses indicate air quality will be improving over the next several years, regional and national regulations will continue this trend in lowering ambient ozone values, the State and local agencies responsible for air quality planning have committed to an aggressive schedule to identify and implement controls that will help the area attain by the marginal attainment date of June 15, 2007. Thus, the request meets certain criteria EPA established (request, discontinuity, emission reductions, and data) and does not violate any of the criteria (attainment and trends). Therefore, EPA is approving the reclassification request for the Detroit-Ann Arbor area.

#### *Greensboro, North Carolina*

The Greensboro area was designated nonattainment for the 8-hour ozone standard on April 15, 2004 and classified moderate based on a design value of 93 ppb. The State of North Carolina presented a petition to EPA, Region 4, requesting downward reclassification of the Greensboro/Winston-Salem/High Point (Triad)

ozone nonattainment area from moderate to marginal for the 8-hour standard. The petition was presented to EPA July 14, 2004. Reclassification of the Greensboro area to marginal will not create a discontinuity since surrounding areas would include higher and lower classifications (the Charlotte area is designated moderate and the Raleigh area is subpart 1 nonattainment).

Local photochemical grid modeling, developed under the Early Action Compact (EAC) program, demonstrates attainment by 2007 for the Triad area which includes the Greensboro area. The modeling was developed according to EPA's draft 8-hour ozone modeling guidance and was used to support a deferral of the effective date for the nonattainment area. Updated local modeling data included in the June 2004 EAC progress report were referenced to support the attainment criteria of the reclassification petition. In addition, CAIR modeling analyses (January 2004) show that Greensboro is expected to continue to be in compliance with the 8-hour ozone standard in 2010.

Expected emissions reductions are detailed in the petition and the EAC progress report submittals and include, for example, an inspection and maintenance program phasing in between July 2002 and 2005. Emissions data demonstrate a decrease in NO<sub>x</sub> emissions of about 382 tons per day between 2000 and 2007. Beyond 2007, further NO<sub>x</sub> emissions reductions are expected due to the Federal, State and local control measures. VOC emissions will decrease by 20 tons per day between 2000 and 2007 with additional future reductions expected. An aggressive control program is being implemented throughout the State that affects stationary and mobile sources. Since 1998, monitored ozone levels at the Greensboro area monitors have steadily decreased and support reclassification.

In summary, the reclassification request for Greensboro meets all of the criteria EPA established (69 FR 23863), including request by the State, supporting trends in emissions and air quality, and modeling evidence that the area would be able to attain by the earlier date (2007). The EPA is approving the reclassification request for Greensboro because the request meets all of the criteria EPA established.

#### *Kent/Queen Anne Counties, Maryland*

The EPA designated this area as moderate on April 15, 2004 due to 8-hour ozone values (design value is 95 ppb). On July 15, 2004 the Maryland Department of the Environment

submitted a request to reclassify Kent and Queen Anne's Counties from moderate to marginal ozone nonattainment. Kent and Queen Anne's Counties, MD are located on Maryland's eastern shore. Reclassification of Kent and Queen Anne's Counties will not create a discontinuity since there would be no area of one classification surrounded by areas of a higher classification. All of the other counties immediately bordering Kent and Queen Anne's Counties are either designated as attainment or moderate nonattainment.

Maryland submitted a modeling study that was performed as part of an earlier effort related to the Early Action Compact (EAC) program. This modeling was performed in accordance with EPA guidance. Initially, however, Maryland had applied the relative reduction factor (RRF) to the wrong ozone design value year. This was remedied by applying the RRF to the larger of the 2000 or 2003 ozone design value. When this correction was made, a value of 82.3 ppb was obtained, demonstrating that these counties should attain the ozone standard by 2007. The EPA's January 2004 CAIR modeling projects nonattainment for Kent County, MD in the 2010 attainment year (86 ppb). Because EPA guidance indicates that smaller scale modeling is generally more appropriate for attainment demonstrations, EPA believes that the local scale air quality modeling (EAC modeling) which projects attainment in 2007 should carry more weight. In summary, both modeling analyses indicate air quality will be improving over the next several years and EPA believes the EAC modeling analysis strongly indicates the area will attain the ozone standard by 2007.

The emissions trend is expected to decrease due to the implementation of various regional rules, including the NO<sub>x</sub> SIP Call and regional rules contained in 1-hour ozone attainment plans in the Baltimore and Washington D.C. area. In addition, because the state of Maryland is located in the statutorily-established Ozone Transport Region (OTR), Kent and Queen Anne's Counties have been implementing several moderate nonattainment area level emission. Moderate area OTR controls include RACT, NSR, and Stage II comparable measures. Queen Anne's county, being part of the 1990 Baltimore Metropolitan Statistical Area (MSA) was also required under the OTR requirements, to implement a high enhanced I/M program and has been doing so.

The 17-year ozone air quality trends in Kent county (Queen Anne's does not have an ozone monitor) are relatively

flat. The last two years of complete data, however, may mark the beginning of at least a short term air quality trend downward. The 4th highest values for ozone from 2002 and 2003 are 103 and 86 ppb, respectively. Further, it can be expected that ozone values will decline due to the implementation of national and regional rules relative to ozone levels in recent years.

In summary, the following factors support the request for reclassification to marginal for Kent and Queen Anne's Counties: the design value of 95 ppb meets our criteria to qualify for consideration of bump down, local modeling provides strong evidence that the area will attain by 2007, additional reductions from regional and national regulations should lower ambient ozone values. Thus, the request meets certain criteria EPA established (request, discontinuity, emission reductions, attainment, and data) and does not violate any of the criteria (trends). Therefore, EPA is approving the reclassification request for Kent and Queen Anne's Counties.

#### *Lancaster, Pennsylvania*

The EPA designated this area as moderate on April 15, 2004 due to 8-hour ozone values (design value is 92 ppb). On July 9, 2004 the Pennsylvania Department of Environmental Protection submitted a request to reclassify Lancaster County from moderate to marginal ozone nonattainment. Lancaster, PA is a single county 8 hour ozone nonattainment area located immediately west of the Philadelphia moderate 8 hour ozone nonattainment area and immediately north of the Baltimore moderate 8 hour ozone nonattainment area. The counties adjacent to and surrounding Lancaster on its west and north are designated subpart 1 ("basic") 8 hour ozone nonattainment areas. Reclassification of Lancaster County will not create a discontinuity since there would be no area of one classification surrounded by areas of a higher classification.

The EPA's January 2004 CAIR modeling projects attainment for Lancaster County, PA in the 2010 attainment year (83 ppb). No local air quality modeling is available. The EPA believes the CAIR modeling analysis is not conclusive with respect to Lancaster's attainment status in 2007; the analysis is not as comprehensive an assessment as would be expected with a SIP attainment demonstration. However the CAIR analysis provides support for a decision to reclassify the area since it indicates air quality will be improving over the next several years.

The emissions trend is expected to decrease due to the implementation of various regional rules, including the NO<sub>x</sub> SIP Call and rules contained in 1-hour ozone attainment plans in the Baltimore, Philadelphia and Washington, DC areas. In addition, because the state of Pennsylvania is located in the statutorily-established Ozone Transport Region (OTR), Lancaster County has been implementing moderate nonattainment area level emission controls. Moderate area OTR controls include RACT, NSR, and Stage II comparable measures. In addition, Lancaster has an OTR enhanced I/M program that became state law in November 2003 and has been implemented since February 2004.

The area's design value is 92 ppb, just one ppb above the marginal classification design value based on 2001–2003 data. The 17-year ozone air quality trends in Lancaster County are relatively flat. The short-term trend in the 4th highest 8-hour ozone value over the last 3 years is downward (97, 96, and 83 ppb). Further, it can be expected that ozone values will decline due to the implementation of national and regional rules relative to ozone levels in recent years.

In summary, the following factors support the request for reclassification to marginal for Lancaster County: the design value of 92 ppb meets our criteria to qualify for consideration of bump down, CAIR modeling indicates air quality will be improving over the next several years, and additional reductions from regional and national regulations should lower ambient ozone values. Thus, the request meets certain criteria EPA established (request, discontinuity, emission reductions, and data) and does not violate any of the criteria (attainment and trends). Therefore, EPA is approving the reclassification request for Lancaster County.

#### *LaPorte, Indiana*

The EPA designated this area as moderate on April 15, 2004 due to 8-hour ozone values (design value is 93 ppb). On July 15, 2004 the Indiana Department of Environmental Management submitted a request to reclassify LaPorte County from moderate to marginal ozone nonattainment. LaPorte County is highly impacted by transport due to the Lake Michigan ozone phenomenon. LaPorte County has few major sources. Reclassification of LaPorte County to marginal will not result in a discontinuity since the only area that is adjacent to LaPorte County that has a higher classification is the Chicago-Gary

moderate nonattainment area. All of the other counties immediately bordering LaPorte County are either designated as attainment or are subpart 1 nonattainment.

Modeling by LADCo to support the 1-hour ozone attainment demonstration for the Lake Michigan area was applied to 8-hour ozone metrics. As noted in Michigan's petition, the LADCo modeling was designed to assess 1-hour ozone and, as such, there are some limitations with using it to assess 8-hour ozone. On the other hand, it should be noted that three of the four modeled episodes are representative periods for high 8-hour ozone and basecase model performance for 8-hour ozone was found to be as good as (or better than) that for 1-hour ozone. The local scale LADCo modeling indicates that air quality is expected to improve (from 93 to 89 ppb) in LaPorte County, but may not reach attainment in 2007. Since this modeling was performed before the Heavy Duty Engine rule was proposed, it does not reflect emission reductions from that national program. Use of a more recent emission inventory and base design value would likely result in lower predicted concentrations. Additional, regional scale, modeling from the CAIR proposal indicates the area will be in attainment (84 ppb) by 2010. The CAIR modeling, however, was not designed to provide results for years prior to 2010. In summary, EPA believes the LADCo and CAIR modeling analyses are not conclusive with respect to LaPorte's attainment status in 2007. Although neither analysis is as comprehensive an assessment as would be expected with a SIP attainment demonstration, they do provide support for a decision to reclassify the area. Both modeling analyses indicate air quality will be improving over the next several years.

The emissions trend is expected to significantly decrease due to the implementation of various regional rules, including the NO<sub>x</sub> SIP Call and rules contained in 1-hour ozone attainment plans in the Lake Michigan area. The trend in the 4th highest values for ozone from 2002, 2003 and 2004 show a large decrease at both the Michigan City and the City of LaPorte monitors from 107/100 ppb in 2002, to 82/84 ppb and, most recently, 68/71 ppb. Further, it can be expected that ozone values will continue at these lower levels due to the implementation of national and regional rules.

In summary, the following factors support the request for downward revision to the 8-hour ozone classification for LaPorte County: The design value of 93 ppb meets our

criteria to qualify for consideration of bump down, local modeling shows that the area will be close to attainment in 2007, proposed CAIR modeling shows the area will attain by 2010, a short term trends analysis shows large decreases in ozone values and additional reductions from regional and national regulations will support this trend in low ambient ozone values. Thus, the request meets certain criteria EPA established (request, discontinuity, emission reductions, trends, and data) and does not violate any of the criteria (attainment). Therefore, EPA is approving the reclassification request for LaPorte County.

#### *Memphis, Arkansas/Tennessee*

The EPA designated this area as moderate on April 15, 2004 due to 8-hour ozone values (design value is 92 ppb). The States of Tennessee and Arkansas submitted the petition by the date required. The petitioners have emphasized that the States of Tennessee and Arkansas, along with the local governments of Shelby and Crittenden Counties, have produced a plan of action which will result in real ozone reductions and attainment by 2007 through an exhaustive collaborative effort. Reclassification of the Memphis area will not create a discontinuity since there would be no area of one classification surrounded by an area of a higher classification.

The modeling submitted showed attainment when using a methodology for adjusting meteorology. The appropriateness of this method is under review by EPA. EPA's evaluation of the modeling submitted without a meteorology adjustment and other assumptions shows the design value declining to 88 ppb by 2007, which makes notable progress toward attainment. Also, EPA's CAIR modeling shows the area should have a design value of 86 ppb by 2010, which also shows notable progress towards attainment. In addition, the CAIR modeling does not include any local controls expected prior to 2007. Therefore, local controls could be expected to further lower the CAIR 2010 design value. Both modeling analyses indicate more reductions are needed beyond those relied on in the local modeling in order to attain by 2007. Additional controls beyond those modeled have been identified in the petition.

Attainment is expected because of the combination of measures to be implemented and potential measures listed in the petition along with the commitment of the areas to implement additional measures as needed to

achieve attainment. As strong support for adequate emission reductions being implemented, Arkansas is conducting a study with limited additional modeling which should identify the sources affecting the monitors more precisely. Arkansas, Tennessee and the Memphis-Shelby County local agency are committed to assess the results of the study and implement additional controls beyond those modeled or identified in the reclassification petition by 2006, if required by the study results. This commitment is made by the Governors, State, and Local officials of both States as signatories to the petition. In addition, the State of Tennessee and the City of Memphis/Shelby County have submitted letters reinforcing the commitments to adopt and implement additional measures as the modeling and study results might identify.

The petition lists 19 emission reduction measures for potential implementation at the state and local level. These measures, when combined with potential Federal measures expected during the period, could bring the area into attainment by 2007. Tennessee is considering measures such as NO<sub>x</sub> Reasonably Available Control Technology rules for stationary sources, expanded Stage I vapor recovery, emissions inspections, and anti-tampering measures. Memphis-Shelby county is considering measures such as diesel engine idling limits, reduced speed limits, controlled burning restrictions, and On Board Diagnostic II emission testing. Arkansas is considering measures such as Stage I vapor recovery, truck stop electrification, and replacement/retrofit construction equipment engines. The EPA has provided Arkansas with \$100,000 in funds to implement truck stop electrification in Crittenden County.

The area's design value is 92 ppb, one ppb above the marginal classification design value based on 2001–2003 data. The area has not had any exceedences at the Crittenden County monitor in 2004 through September 10; the 4th highest monitor value is 78 ppb. If this value remains the 4th highest for 2004, the design value will decline to 87, well within the marginal range and only 3 ppb above the attainment level. Also, with the monitor values already established for 2002 and 2003 for the Shelby County monitors, the 2004 data, to date, are indicating attainment. The design value trends for the two Shelby County monitors have declined since 2000.

The emissions from ozone precursors VOC and NO<sub>x</sub> from stationary sources in Shelby County, TN have declined

significantly since 1993. Emissions estimates in the Memphis Early Action compact March 31, 2004 submittal, indicate that emissions should decrease by 28% for NO<sub>x</sub> and 19% for VOCs from 2001 to 2007. Tennessee is included in the NO<sub>x</sub> SIP Call region and pursuant to the State plan adopted to meet the SIP Call, the Tennessee Valley Authority (TVA) Allen Power Plant will reduce NO<sub>x</sub> emissions by 57.5 tons per day (tpd). We anticipate the 2004 and 2005 design values will show air quality improvements from these measures. Thus, the air quality and emissions trends support reclassification.

In summary, the data, analysis, and commitments presented in the petition support the likelihood of attainment of the 8-hour ozone standard by 2007 and support the request for downward revision to the 8-hour ozone classification for the Memphis area. Specifically, the *Request by States* criteria is satisfied since the petition was submitted by the governors of Tennessee and Arkansas; the *Discontinuity* criteria is satisfied since there would be no area of one classification surrounded by one or more areas of a higher classification; the *Attainment* criteria is not failed since the modeling shows notable progress toward attainment; the *Emissions Reductions* criteria is satisfied because of the emission reductions available and the commitment by the state and local agencies to adopt and implement any controls necessary to attain the 8-hour standard based on a comprehensive study of sources contributing to nonattainment; the *Trends* criteria is satisfied since the downward trends in air quality monitor and emissions data over the time period to attainment are strong indicators of progress towards attainment; and the *Years of Data* criteria is satisfied since the years chosen (2001–2003) are consistent with the time period used for the designations for the 8-hour ozone standard. Thus, the request meets certain criteria EPA established (request, discontinuity, emission reductions, trends, and data) and does not violate any of the criteria (attainment). Therefore, EPA is approving the reclassification request for Memphis.

#### *Muskegon County, Michigan*

The EPA designated this area as moderate on April 15, 2004 due to 8-hour values (design value is 95 ppb). On July 15, 2004 MDEQ submitted a request to reclassify Cass County from moderate ozone nonattainment to marginal ozone nonattainment. Muskegon County is highly impacted by transport due to the Lake Michigan ozone phenomenon.

Muskegon County has few major sources. Reclassification of Muskegon County to marginal will not result in a discontinuity since all of the counties immediately bordering Muskegon County are either designated as attainment or are subpart 1 nonattainment.

Modeling by LADCo to support the 1-hour ozone attainment demonstration for the Lake Michigan area was applied to 8-hour ozone metrics. As noted in Michigan's petition, the LADCo modeling was designed to assess 1-hour ozone and, as such, there are some limitations with using it to assess 8-hour ozone. On the other hand, it should be noted that three of the four modeled episodes are representative periods for high 8-hour ozone and basecase model performance for 8-hour ozone was found to be as good as (or better than) that for 1-hour ozone. The local scale LADCo modeling indicates that Muskegon County will be near attainment (86 ppb) in 2007. Since this modeling was performed before the Heavy Duty Engine rule was proposed, it does not reflect emission reductions from that national program. Use of a more recent emission inventory and base design value would likely result in lower predicted concentrations. Additional, regional scale, modeling from the January 2004 CAIR proposal indicates the area will be in attainment (82 ppb) by 2010. The CAIR modeling, however, was not designed to provide results for years prior to 2010. The EPA believes the LADCo and CAIR modeling analyses are not conclusive with respect to Muskegon's attainment status in 2007. Although neither analysis is as comprehensive an assessment as would be expected with a SIP attainment demonstration, they do provide support for a decision to reclassify the area. Both modeling analyses indicate air quality will be improving over the next several years.

The emissions trend is expected to significantly decrease due to the implementation of various regional rules, including the NO<sub>x</sub> SIP Call and rules contained in 1-hour ozone attainment plans in the Lake Michigan area. The trend in the 4th highest values for ozone from 2002, 2003 and 2004 show a decrease from 96 ppb, to 94 ppb and, most recently, 70 ppb. Further, it can be expected that ozone values will continue at these lower levels due to the implementation of national and regional rules.

In summary, the following factors support the request for downward revision to the 8-hour ozone classification for Muskegon County: the design value of 95 ppb meets our

criteria to qualify for consideration of bump down, local and regional modeling analyses indicate air quality will be improving over the next several years, a short term trends analysis shows ozone values decreasing and additional reductions from regional and national regulations will continue this trend in lowering ambient ozone values. Thus, the request meets certain criteria EPA established (request, discontinuity, emission reductions, trends, and data) and does not violate any of the criteria (attainment). Therefore, EPA is approving the reclassification request for Muskegon County.

#### *Richmond, Virginia*

The EPA designated this area as moderate on April 15, 2004 due to 8-hour ozone values (design value is 94 ppb). On July 12, 2004 the Virginia Department of the Environmental Quality submitted a request to reclassify Richmond from moderate to marginal ozone nonattainment. The Richmond, VA moderate ozone nonattainment area consists of five counties (Charles City, Chesterfield, Hanover, Henrico, and Prince George) and four independent cities (Colonial Heights, Hopewell, Petersburg, and Richmond). This area is adjacent to the southeast edge of the Washington D.C. moderate 8-hour ozone nonattainment area. To the northeast of Richmond, and across the Chesapeake Bay, is the Philadelphia moderate 8-hour ozone nonattainment area. Richmond is also adjacent to and located to the northwest of the Norfolk-Virginia Beach, VA subpart 1 8-hour ozone nonattainment area. Reclassification of the Richmond area will not create a discontinuity since there would be no area of one classification surrounded by areas of a higher classification.

The modeling performed by Virginia for demonstrating attainment in Richmond by 2007 was based on modeling conducted for the Roanoke, VA EAC. While not optimized for the Richmond area, this modeling can be used to indicate whether Richmond might attain by 2007. The EAC modeling projects attainment in the Richmond area in 2007. The highest of these projected design values is 84.1 ppb for the Hanover monitor. In addition, EPA's January 2004 CAIR modeling projects Richmond's ozone concentrations to be well below the ozone standard in 2010 (77 ppb). Although neither analysis is as comprehensive an assessment as would be expected with a SIP attainment demonstration, together they provide support that the Richmond area will attain the ozone standard by 2007.

On August 30, 2004, the Director of Virginia's Department of Environmental Quality submitted a letter to EPA (followed up by a letter on September 2, 2004 from the VA Air Director) committing to adopt additional emission control measures to reduce ozone levels. Several of these measures are already in place in the smaller 1-hour Richmond ozone nonattainment area or in the northern Virginia (Washington DC) 1-hour ozone nonattainment area. This letter stated that control measures such as reformulated gasoline, stage I, and existing source RACT regulations would be extended into the larger Richmond 8-hour ozone nonattainment area. The northern Virginia control measures (solvent cleaning, architectural and maintenance coatings, motor vehicle refinishing, and portable fuel containers) would be studied and the process of adoption for the Richmond 8-hour ozone nonattainment area would commence. Therefore, the emissions trend is expected to decrease due to the implementation of various local, regional, and national rules.

The ozone air quality trends in the Richmond area are relatively flat. It can be expected that ozone values will decline due to the implementation of local, regional, and national rules relative to ozone levels in recent years.

In summary, the following factors support the request for reclassification to marginal for the Richmond area: the design value of 94 ppb meets our criteria to qualify for consideration of bump down, local and regional modeling together with declining emissions from local, regional and national regulations support the conclusion that Richmond is likely to attain by 2007. Thus, the request meets certain criteria EPA established (request, discontinuity, emission reductions, attainment, and data) and does not violate any of the criteria (trends). Therefore, EPA is approving the reclassification request for the Richmond area.

#### **VIII. Does This Action Impact the Deferred Effective Date of Nonattainment Designations for the Greensboro EAC Area?**

As long as the Greensboro area continues to meet the milestones and submissions that compact areas are required to complete, the area would continue to be eligible for a deferred effective date of the nonattainment designation for the 8-hour ozone standard. The effective date of the 8-hour ozone nonattainment designation for the compact area counties listed in 40 CFR part 81 remains deferred until

September 30, 2005. Additional information on EACs is contained in the April 30, 2004 final rule (69 FR 23864–23876).

#### **IX. If an Area is Bumped Down to Marginal, Then Misses the Attainment Date and is Bumped Up to Moderate, What Due Dates Apply?**

Within 6 months following the applicable attainment date [including any extension thereof pursuant to section 181(a)(5)] for an ozone nonattainment area, the Administrator is required to determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law to the higher of (i) the next higher classification for the area, or (ii) the classification applicable to the area's design value as of the attainment date.

Section 182(i) of the CAA specifies that the deadlines provided under the requirements of section 182 remain applicable, except that the Administrator "may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions." All required controls and emissions reductions must be implemented or achieved on a schedule that facilitates attainment by the attainment date.

In previous rulemaking actions, EPA has provided 12–18 months for States to submit required SIP revisions.<sup>6</sup> However, States should plan to adopt controls as soon as possible because the determination of whether the area attains the NAAQS by the attainment deadline must be based on air quality during the preceding three ozone seasons. That is, the determination of whether a moderate area attains the NAAQS by June 15, 2010 will be based on air quality during the 2007–2009 period. Thus, the sooner the moderate-area controls are implemented, the more likely the area will reach attainment by the 2010 attainment date.

#### **X. Statutory and Executive Order Reviews**

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate and classify areas. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS

<sup>6</sup> See notices under the heading "1-Hour Ozone Federal Register Notices Changes to a Higher Classification" at <http://www.epa.gov/oar/oaqps/greenbk/ofr2rpt2.html>.

and their classification, if any. In this final rule, we reclassify certain areas designated nonattainment.

#### 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 final rule was not formally submitted to OMB for review.

#### B. Paperwork Reduction Act

This final action to reclassify nine ozone nonattainment areas from moderate to marginal 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 (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 final 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 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.

This rule is not subject to the RFA because it was not subject to notice and comment rulemaking requirements. After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### 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 final action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of \$100 million or more in any 1 year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the 8-hour National Ambient Air Quality Standards (NAAQS) for Ozone (62 FR 38894; July 18, 1997), therefore, no UMRA analysis is needed. This rule reclassifies certain areas with respect to the 8-hour ozone standard. The CAA requires States to develop plans, including control measures, based on their designations and classifications.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate \$100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of \$100 million or more in the aggregate in any 1 year. Nonetheless, EPA carried out consultations with governmental entities affected by this rule, including States and local air pollution control agencies.

#### 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 final 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 rule will 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 rule.

Although Executive Order 13132 does not apply to this rule, EPA discussed the reclassification process with representatives of State and local air pollution control agencies and Tribal governments. This rule is not subject to notice and comment and, therefore, no proposed rulemaking was prepared which specifically solicited comment on the reclassifications. However, we provided notification of the reclassification process and our criteria in the April 30, 2004 **Federal Register** action.

*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 final rule does not have "Tribal implications" as specified in Executive Order 13175. This rule concerns the reclassification of certain areas for the 8-hour ozone standard. The CAA provides for States to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as programs to attain and maintain the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

This final rule does not have Tribal implications as defined by 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. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply. Although Executive Order 13175 does not apply to this rule, EPA did outreach to Tribal representatives regarding the reclassifications.

*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 final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this risk assessment are contained in the National Ambient Air Quality Standards for Ozone, Final Rule (62 FR 38855–38896; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*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 action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

*K. Judicial Review*

Sections 172(a)(1)(B) and 181(a)(3) provide that classification determinations "shall not be subject to judicial review until the Administrator takes final action" approving or disapproving a SIP revision or triggering sanctions under section 179 with respect to a SIP revision required for an area's classification. Thus, any petitions for review of a classification decision made in this action must be filed within 60 days of publication of a final EPA action triggering sanctions with respect to a SIP submission required for the area's classification or approving or disapproving a SIP required for the area's classification. Since such challenge would be brought in conjunction with EPA's action regarding a SIP submission, a petition for review challenging the classification decision should be brought in the United States Court of Appeals for the appropriate circuit.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National Parks, Wilderness areas.

Dated: September 15, 2004.

**Michael O. Leavitt,**  
Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 81, subpart C is amended as follows:

**PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

■ 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**

**PART 81—[AMENDED]**

■ 2. In § 81.304, the table entitled “Arkansas-Ozone (8-Hour Standard)” is

**ARKANSAS-OZONE (8-HOUR STANDARD)**

amended by revising the entry for “Crittenden County” to read as follows:

**§ 81.304 Arkansas.**

\* \* \* \* \*

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Memphis, TN—AR: (AQCR 018 Metropolitan Memphis Interstate) Crittenden County .....	( <sup>2</sup> )	Nonattainment .....	( <sup>2</sup> )	Subpart 2/Marginal
* * * * *	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

<sup>2</sup> November 22, 2004.

■ 3. In § 81.315, the table entitled “Indiana-Ozone (8-Hour Standard)” is

amended by revising the entry for “La Porte County” to read as follows:

**INDIANA-OZONE (8-HOUR STANDARD)**

**§ 81.315 Indiana.**

\* \* \* \* \*

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
La Porte Co., IN: La Porte County .....	( <sup>2</sup> )	Nonattainment .....	( <sup>2</sup> )	Subpart 2/Marginal
* * * * *	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

<sup>2</sup> November 22, 2004.

■ 4. In § 81.321, the table entitled “Maryland-Ozone (8-Hour Standard)” is amended by revising the entries for

“Kent and Queen Anne’s Counties” to read as follows:

**MARYLAND-OZONE (8-HOUR STANDARD)**

**§ 81.321 Maryland.**

\* \* \* \* \*

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Kent and Queen Anne’s Cos., MD: Kent County .....	( <sup>3</sup> )	Nonattainment .....	( <sup>3</sup> )	Subpart 2/Marginal
Queen Anne’s County .....	( <sup>3</sup> )	Nonattainment .....	( <sup>3</sup> )	Subpart 2/Marginal
* * * * *	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

<sup>3</sup> November 22, 2004.

■ 5. In § 81.323, the table entitled “Michigan-Ozone (8-Hour Standard)” is amended by revising the entries for “Cass, Lenawee, Livingston, Macomb,

Monroe, Oakland, St. Clair, Washtenaw, Wayne, and Muskegon Counties” to read as follows:

**§ 81.323 Michigan.**

\* \* \* \* \*

MICHIGAN-OZONE (8-HOUR STANDARD)

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	* * *	* * *	* * *	* * *
Cass County, MI:				
Cass County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal
Detroit-Ann Arbor, MI:				
Lenawee County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal
Livingston County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal
Macomb County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal
Monroe County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal
Oakland County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal
St. Clair County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal
Washtenaw County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal
Wayne County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal
* * *	* * *	* * *	* * *	* * *
Muskegon, MI:				
Muskegon County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal
* * *	* * *	* * *	* * *	* * *

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.  
<sup>2</sup> November 22, 2004.

■ 6. In § 81.334, the table entitled “North Carolina-Ozone (8-Hour Standard)” is amended by revising the entries for Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, and Rockingham Counties’ to read as follows:

**§ 81.334 North Carolina.**  
 \* \* \* \* \*

NORTH CAROLINA-OZONE (8-HOUR STANDARD)

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	* * *	* * *	* * *	* * *
Greensboro-Winston-Salem-High Point, NC:				
Alamance County .....	(2) (3)	Nonattainment .....	(3)	Subpart 2/Marginal
Caswell County .....	(2) (3)	Nonattainment .....	(3)	Subpart 2/Marginal
Davidson County .....	(2) (3)	Nonattainment .....	(3)	Subpart 2/Marginal
Davie County .....	(2) (3)	Nonattainment .....	(3)	Subpart 2/Marginal
Forsyth County .....	(2) (3)	Nonattainment .....	(3)	Subpart 2/Marginal
Guilford County .....	(2) (3)	Nonattainment .....	(3)	Subpart 2/Marginal
Randolph County .....	(2) (3)	Nonattainment .....	(3)	Subpart 2/Marginal
Rockingham County .....	(2) (3)	Nonattainment .....	(3)	Subpart 2/Marginal
* * *	* * *	* * *	* * *	* * *

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.  
<sup>2</sup> Early Action Compact Area, effective date deferred until September 30, 2005.  
<sup>3</sup> November 22, 2004.

■ 7. In § 81.339, the table entitled “Pennsylvania-Ozone (8-Hour Standard)” is amended by revising the entry for “Lancaster County” to read as follows:

**§ 81.339 Pennsylvania.**  
 \* \* \* \* \*

PENNSYLVANIA-OZONE (8-HOUR STANDARD)

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	* * *	* * *	* * *	* * *
Lancaster, PA:				
Lancaster County .....	(2)	Nonattainment .....	(2)	Subpart 2/Marginal

PENNSYLVANIA-OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
*	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.  
<sup>2</sup> November 22, 2004.

■ 8. In § 81.343, the table entitled “Tennessee-Ozone (8-Hour Standard)” is amended by revising the entry for “Shelby County” to read as follows: **§ 81.343 Tennessee.**

TENNESSEE-OZONE (8-HOUR STANDARD)

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
*	*	*	*	*
Memphis, TN-AR: Shelby County .....	(3)	Nonattainment .....	(3)	Subpart 2/Marginal
*	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.  
<sup>3</sup> November 22, 2004.

■ 9. In § 81.347, the table entitled “Virginia-Ozone (8-Hour Standard)” is amended by revising the entries for “Charles City County, Chesterfield County, Colonial Heights City, Hanover County, Henrico County, Hopewell City, Petersburg City, Prince George County, and Richmond City” to read as follows: **§ 81.347 Virginia.**

VIRGINIA-OZONE (8-HOUR STANDARD)

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
*	*	*	*	*
Richmond-Petersburg, VA: Charles City County .....	(3)	Nonattainment .....	(3)	Subpart 2/Marginal
Chesterfield County .....	(3)	Nonattainment .....	(3)	Subpart 2/Marginal
Colonial Heights City .....	(3)	Nonattainment .....	(3)	Subpart 2/Marginal
Hanover County .....	(3)	Nonattainment .....	(3)	Subpart 2/Marginal
Henrico County .....	(3)	Nonattainment .....	(3)	Subpart 2/Marginal
Hopewell City .....	(3)	Nonattainment .....	(3)	Subpart 2/Marginal
Petersburg City .....	(3)	Nonattainment .....	(3)	Subpart 2/Marginal
Prince George County .....	(3)	Nonattainment .....	(3)	Subpart 2/Marginal
Richmond City .....	(3)	Nonattainment .....	(3)	Subpart 2/Marginal
*	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.  
<sup>3</sup> November 22, 2004.

[FR Doc. 04-21184 Filed 9-21-04; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-2004-0278; FRL-7679-5]

**Tribenuron Methyl; Pesticide Tolerance****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of tribenuron methyl in or on canola, seed; cotton, gin byproducts; cotton, undelinted seed; and flax, seed. E.I. DuPont De Nemours and Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). In addition, this regulatory action is part of the tolerance reassessment requirements of section 408(q) of the FFDCA 21 U.S.C. 346a(q), as amended by the FQPA of 1996. By law, EPA is required to reassess 100% of the tolerances in existence on August 2, 1996, by August 2006. This regulatory action will count for eight reassessments toward the August 2006 deadline.

**DATES:** This regulation is effective September 22, 2004. Objections and requests for hearings must be received on or before November 22, 2004.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP-2004-0278. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:**

James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-5697 e-mail address: [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does This Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), *e.g.*, agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), *e.g.*, cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), *e.g.*, agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), *e.g.*, agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Access Electronic Copies of This Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gpo/opptsfrs/home/guidelin.htm/>.

**II. Background and Statutory Findings**

In the **Federal Register** of July 7, 2004 (69 FR 40909) (FRL-7364-8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F6135) by E.I. DuPont de Nemours and Company, DuPont Crop Protection, Barley Mill Plaza, Wilmington, DE 19880-0038. The petition requested that 40 CFR 180.451 be amended by establishing a tolerance for residues of the herbicide tribenuron methyl, [methyl 2-[[[[(4-methoxy -6-methyl-1, 3, 5-triazin-2-yl) methylamino] carbonyl]amino]sulfonyl]benzoate], in or on imazethapyr tolerant canola at 0.02 parts per million (ppm), cotton gin trash at 0.02 ppm, cotton seed at 0.02 ppm, and Crop Development Center (CDC) trifid flax at 0.02 ppm. That notice included a summary of the petition prepared by E. I. DuPont de Nemours and Company, the registrant. There were no comments received in response to the notice of filing.

During the course of the review the Agency decided to correct the Company address and correct the listings for the commodities canola, cotton and flax. The company address is changed to DuPont Crop Protection, Stine-Haskell Research Center, Newark, DE 19714. The listing of the commodities imazethapyr tolerant canola, cotton seed, cotton gin trash and Crop Development Center (CDC) trifid flax are corrected to read canola, seed; cotton, undelinted seed; cotton, gin byproducts and flax, seed; respectively.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. \* \* \*

EPA performs a number of analyses to determine the risks from aggregate