

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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 a new temporary § 165.T14–161 to read as follows:

**§ 165.T14–161 Security Zone; Nawiliwili Harbor, Kauai, HI.**

(a) *Location.* The following land areas, and water areas from the surface of the water to the ocean floor, are a security zone that is activated as described in paragraph (c) of this section, and enforced subject to the provisions of paragraph (d) of this section: All waters of Nawiliwili Harbor, Kauai, shoreward of the Nawiliwili Harbor COLREGS DEMARCATION LINE (See 33 CFR 80.1450), excluding the waters west of a line running from the southeastern most point of the breakwater of Nawiliwili Small Boat Harbor due south to the south shore of the harbor, and excluding the waters from Kalapaki Beach south to a line extending from the western most point of Kukii Point due west to the Harbor Jetty. The land of the jetty south of Nawiliwili Park including the jetty access road, commonly known as Jetty Road, is included within the security zone.

(b) *Effective period.* This section is effective from November 1, 2007, through December 31, 2007. It will be activated for enforcement pursuant to paragraph (c) of this section.

(c) *Enforcement periods.* The zone described in paragraph (a) of this section will be activated for enforcement 60 minutes before the Hawaii Superferry's arrival into the zone and remain activated for 10 minutes after the Hawaii Superferry's departure from the zone. The activation of the zone for enforcement will be announced by marine information broadcast, and by a red flag, illuminated between sunset and sunrise, displayed from Pier One and the Harbor Facility Entrance on Jetty Road.

(d) *Regulations.* (1) Under 33 CFR 165.33, entry by persons or vessels into the security zone created by this section and activated as described in paragraph (c) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. Operation of any type of vessel, including every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, within the security zone is prohibited. If a vessel is found to be operating within the security zone without permission of the Captain of the Port, Honolulu, and refuses to leave, the

vessel is subject to seizure and forfeiture.

(2) All persons and vessels permitted in the security zone must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard and other persons permitted by law to enforce this regulation. Upon being hailed by an authorized vessel or law enforcement officer using siren, radio, flashing light, loudhailer, voice command, or other means, the operator of a vessel must proceed as directed.

(3) If authorized passage through the security zone, a vessel must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. While underway with permission of the Captain of the Port or his or her designated representatives, no person or vessel is allowed within 100 yards of a the Hawaii Super Ferry when it is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(4) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within the security zone in order to ensure navigational safety.

(e) *Enforcement officials.* Any Coast Guard commissioned, warrant, or petty officer, and any other person permitted by law, may enforce the regulations in this section.

Dated: September 26, 2007.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.*

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**BILLING CODE 4910–15–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA–R04–OAR–2007–0601–200730; FRL–8477–2]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina; Redesignation of the Raleigh-Durham-Chapel Hill 8-Hour Ozone Nonattainment Area to Attainment for Ozone**

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

**ACTION:** Proposed rule.

**SUMMARY:** On June 7, 2007, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR), submitted a request to redesignate the Raleigh-Durham-Chapel Hill 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Raleigh-Durham-Chapel Hill Area. The Raleigh-Durham-Chapel Hill 8-hour ozone nonattainment area (the “Triangle Area”) is comprised of Durham, Franklin, Granville, Johnston, Orange, Person and Wake Counties in their entireties, and Baldwin, Center, New Hope and Williams Townships in Chatham County. In this action, EPA is proposing to approve the 8-hour ozone redesignation request for the Triangle Area. Additionally, EPA is proposing to approve the 8-hour ozone maintenance plan for the Triangle Area, including the motor vehicle emissions budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and an insignificance determination for volatile organic compounds (VOC) emissions from motor vehicles. This proposed approval of North Carolina's redesignation request is based on EPA's determination that North Carolina has demonstrated that the Triangle Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Triangle 8-hour ozone nonattainment area has attained the 8-hour ozone standard. Further, in this action, EPA is also describing the status of its transportation conformity adequacy determination for the new 2008 and 2017 MVEBs for NO<sub>x</sub>, and for the insignificance determination for VOC contribution from motor vehicle emissions to the 8-hour ozone pollution, that are contained in the 8-hour ozone maintenance plan for the Triangle Area.

**DATES:** Comments must be received on or before November 2, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0601, by one of the following methods:

(a) *http://www.regulations.gov*:

Follow the on-line instructions for submitting comments.

(b) *E-mail: ward.nacosta@epa.gov*.

(c) *Fax: (404) 562-9019*.

(d) *Mail: EPA-R04-OAR-2007-0601*, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

(e) *Hand Delivery or Courier:* Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2007-0601. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment 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 information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nacosta C. Ward of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Nacosta Ward can be reached via electronic mail at *ward.nacosta@epa.gov*.

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#### **I. What Proposed Actions Are EPA Taking?**

EPA is proposing to take two related actions, which are summarized below and described in greater detail throughout this notice of proposed rulemaking: (1) To redesignate the Triangle Area to attainment for the 8-hour ozone NAAQS; and (2) to approve North Carolina's 8-hour ozone maintenance plan into the North Carolina SIP, including the associated MVEBs for NO<sub>x</sub> and the VOC insignificance determination. In addition, and related to today's proposed actions, EPA is also notifying the public of the status of EPA's adequacy determination for the Triangle Area subarea<sup>1</sup> NO<sub>x</sub> MVEBs and the insignificance determination for VOC emission contribution from motor vehicles to 8-hour ozone pollution in the Triangle Area.

First, EPA is proposing to determine that the Triangle Area has attained the 8-hour ozone standard, and that the Triangle Area has met the other requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is now proposing to approve a request to change the legal designation of the Triangle Area from nonattainment to attainment for the 8-hour ozone NAAQS.

Second, EPA is proposing to approve North Carolina's 8-hour ozone maintenance plan for the Triangle Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Triangle Area in attainment of the 8-hour ozone NAAQS through 2017. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2008 and 2017 subarea MVEBs for NO<sub>x</sub>, and an insignificance determination regarding the contribution of VOC emissions from

<sup>1</sup> The term "subarea" refers to the portion of the area, in a nonattainment or maintenance area, for which the MVEB applies. In this case, the "subareas" are established at the county level so this indicates that the MVEBs cover individual counties and also indicates to transportation conformity implementers in this area that there are separate county-level MVEBs for each county in this area. *EPA's Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards* explains more about the possible geographical extent of a MVEB, how these geographical areas are defined, and how transportation conformity is implemented in these different geographical areas.

motor vehicles to the ozone pollution in the Triangle Area. Today, EPA is proposing to approve (into the North Carolina SIP) the 2008 and 2017 subarea NO<sub>x</sub> MVEBs and the VOC insignificance determination, that are included as part of North Carolina's maintenance plan for the Triangle Area for the 8-hour ozone NAAQS. The VOC insignificance determination applies to the entire Triangle Area, whereas the NO<sub>x</sub> MVEBs are subarea MVEBs that apply to individual counties within the Triangle Area. Please see Section V of this rulemaking for a listing of the MVEBs for these individual counties.

Third, EPA is also notifying the public of the status of EPA's adequacy process for the newly-established 2008 and 2017 subarea NO<sub>x</sub> MVEBs, and its insignificance determination for VOC for the Triangle Area. The adequacy comment period for the Triangle Area's 2008 and 2017 subarea NO<sub>x</sub> MVEBs, and the VOC insignificance determination began on March 21, 2007, with EPA's posting of the availability of North Carolina's maintenance plan submittal on EPA's Adequacy Web site (<http://www.epa.gov/otaq/stateresources/transconf/cursips.htm>). The adequacy comment period for these subarea MVEBs, and the VOC insignificance determination closed on April 20, 2007. No adverse comments were received during the adequacy public comment period. Please see section VIII of this proposed rulemaking for further explanation of this process, and for more details on the MVEBs and the VOC insignificance determination.

Today's notice of proposed rulemaking is in response to North Carolina's June 7, 2007, SIP submittal, which supersedes North Carolina's March 12, 2007, submittal that included a request for parallel processing. The June 7, 2007, submittal requests the redesignation of the Triangle Area, and includes a SIP revision addressing the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

## II. What Is the Background for EPA's Proposed Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the

previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). (See, 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "*Comparisons with the Primary and Secondary Ozone Standards*" states:

The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Triangle 8-hour ozone nonattainment area was designated using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857).

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 EPA refers to as "basic" nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as "classified" nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 8-hour ozone nonattainment areas

are subject only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's Phase 1 8-hour ozone implementation rule (69 FR 23857) (Phase 1 Rule), signed on April 15, 2004, and published April 30, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values.

Durham and Wake Counties, and the Dutchville Township portion of Granville County were originally designated as a moderate nonattainment area for the 1-hour ozone standard on November 6, 1991 (56 FR 56694). Durham and Wake Counties, and the Dutchville Township portion of Granville County were redesignated as attainment for the 1-hour ozone standard on April 18, 1994 (59 FR 18300). On April 30, 2004, EPA designated the Triangle Area (of which Durham and Wake Counties, and the Dutchville Township portion of Granville County are a part) as a "basic" 8-hour ozone nonattainment area (see, 69 FR 23857, April 30, 2004). Thus, on June 7, 2007, when North Carolina submitted its final redesignation request, the Triangle Area was classified under subpart 1 of the CAA, and was obligated to meet only the subpart 1 requirements.

Various aspects of EPA's Phase 1 Rule were challenged in court. On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA's Phase 1 Rule (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD) v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas

under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the Triangle Area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this Area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating

requirements in accordance with the requirements due at the time the request is submitted and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Triangle Area was classified under subpart 1 and was obligated to meet only subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni Memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). See also, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465-66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan). See, *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation). See, e.g. also, 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court has recognized the inequity in such retroactive rulemaking, (*Sierra Club v. Whitman*, 285 F. 3d 63 (D.C. Cir. 2002)), in which the Court upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the states, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here, it would be unfair to penalize the area by applying to it for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to the requirements under the 1-hour standard ozone standard, only the Durham and Wake Counties, and the Dutchville Township portion of Granville County of the

Triangle Area were originally designated as a moderate nonattainment area for the 1-hour ozone standard on November 6, 1991 (56 FR 56694); the remainder of the Triangle Area was designated as attainment. Durham and Wake Counties, and the Dutchville Township portion of Granville County were redesignated as attainment for the 1-hour ozone standard on April 18, 2004 (59 FR 18300). Therefore, the entire Triangle Area was redesignated to attainment of the 1-hour ozone standard prior to its nonattainment designation for the 8-hour ozone standard. As a result, the Triangle Area is considered to be a 1-hour attainment area subject to a CAA section 175A maintenance plan for the 1-hour standard. The D.C. Circuit Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court, in its June 8th decision, clarified that for those areas with 1-hour MVEBs in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until they are replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

First, there are no conformity requirements relevant for the Triangle Area redesignation request, such as a transportation conformity SIP. It is EPA's longstanding policy that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation, and Federal conformity rules apply where state rules have not been approved. See, 40 CFR 51.390; see also, *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding EPA's interpretation). See also, 60 FR 62748 (Dec. 7, 1995) (redesignation of Tampa, Florida). Durham and Wake Counties, and the Dutchville Township portion of Granville County, currently have a fully approved 1-hour ozone transportation conformity SIP, which was approved on December 27, 2002 (67 FR 78983).

Second, with regard to the three other anti-backsliding provisions for the 1-hour standard that the D.C. Circuit Court found were not properly retained, Durham and Wake Counties, and the Dutchville Township portion of Granville County comprise an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision

requirements no longer apply to this area because it was redesignated to attainment of the 1-hour standard. As a result, the decisions in *SCAQMD* should not alter any requirements that would preclude EPA from finalizing the redesignation of the Triangle Area to attainment for the 8-hour ozone standard.

As noted earlier, in 2006, the ambient ozone data for the Triangle Area indicated no further violations of the 8-hour ozone NAAQS, using data from the 3-year period of 2004–2006 to demonstrate attainment. As a result, on June 7, 2007, North Carolina requested redesignation of the Triangle Area to attainment for the 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (April 1st until October 31st) of 2004–2006, indicating that the 8-hour ozone NAAQS has been achieved for the entire Triangle Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

### III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further

guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz,

Director, Office of Air Quality Planning and Standards, May 10, 1995.

### IV. Why Is EPA Proposing These Actions?

On June 7, 2007, North Carolina requested redesignation of the Triangle 8-hour ozone nonattainment area to attainment for the 8-hour ozone standard. EPA's evaluation indicates that North Carolina has demonstrated that the Triangle Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA. EPA is also announcing the status of its adequacy determination for the 2008 and 2017 subarea NO<sub>x</sub> MVEBs, and the VOC insignificance determination, which are relevant to the requested redesignation.

### V. What Is the Effect of EPA's Proposed Actions?

EPA's proposed actions establish the bases upon which EPA may take final action on the issues being proposed for approval today. Approval of North Carolina's redesignation request would change the legal designation of the Durham, Franklin, Granville, Johnston, Orange, Person and Wake Counties in their entirety, and Baldwin, Center, New Hope and Williams Townships in Chatham County for the 8-hour ozone NAAQS found at 40 CFR part 81. Approval of North Carolina's request would also incorporate into the North Carolina SIP, a plan for the Triangle Area for maintaining the 8-hour ozone NAAQS in the Area through 2017. This maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS. The maintenance plan also establishes subarea NO<sub>x</sub> MVEBs and provides a VOC insignificance determination for the Triangle Area. The following Table identifies the subarea NO<sub>x</sub> MVEBs for the year 2008 and 2017 for this Area.

TABLE 1.—TRIANGLE SUBAREA NO<sub>x</sub> MVEBS  
[Kilograms per day]

County	2008	2017
Chatham .....	1,565	948
Durham .....	13,106	4,960
Franklin .....	2,048	1,139
Graham .....	4,649	1,714
Johnston .....	12,583	5,958
Orange .....	9,933	3,742
Person .....	1,359	791
Wake .....	36,615	16,352

Approval of North Carolina's maintenance plan would also result in approval of the subarea NO<sub>x</sub> MVEBs, and the VOC insignificance determination. Additionally, EPA is

notifying the public of the status of its adequacy determination for the 2008 and 2017 subarea NO<sub>x</sub> MVEBs, and its VOC insignificance determination, pursuant to 40 CFR 93.118(f)(1).

#### VI. What Is EPA's Analysis of the Request?

EPA is proposing to make the determination that the Triangle Area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met for the Triangle Area. The basis for EPA's determination for the area is discussed in greater detail below.

#### Criteria (1)—The Triangle Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Triangle Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50,

Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from ambient ozone monitoring stations in the Triangle Area for the ozone season from 2004–2006. This data has been quality assured and is recorded in AQS. The fourth high averages for 2004, 2005 and 2006, and the 3-year average of these values (i.e., design values), are summarized in the following Table:

TABLE 2.—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 8-HOUR OZONE FOR THE TRIANGLE AREA  
[In parts per million]

COUNTY	Chatham	Durham	Franklin	Granville	Johnston	Person	Wake	
MONITOR (AIRS ID)	Pittsboro (#37-037-0004)	Duke Street (#37-063-0013)	Franklinton (#37-069-0001)	Butner (#37-077-0001)	West Johnston (#37-101-0002)	Bushy Fork (#37-145-0003)	Millbrook (#37-183-0014)	Fuquay Varina (#37-183-0016)
2004 .....	0.068	0.074	0.077	0.081	0.074	0.076	0.075	0.077
2005 .....	0.079	0.076	0.080	0.085	0.083	0.079	0.082	0.085
2006 .....	0.066	0.075	0.074	0.075	0.072	0.071	0.078	0.072
Design Value .....	0.071	0.075	0.077	0.080	0.076	0.075	0.078	0.078

As discussed above, the design value for an area is the highest design value recorded at any monitor in the area. Therefore, the design value for the Triangle Area is 0.080 ppm, which meets the standard as described above. As discussed in more detail below, North Carolina has committed to continue monitoring in this area in accordance with 40 CFR part 58. The data submitted by North Carolina provides an adequate demonstration that the Triangle Area has attained the 8-hour ozone NAAQS.

*Criteria (2)—North Carolina has a Fully Approved SIP Under Section 110(k) for the Triangle Area and Criteria (5)—has met all Applicable Requirements Under Section 110 and Part D of the CAA*

Below is a summary of how these two criteria were met.

EPA has determined that North Carolina has met all applicable SIP requirements for the Triangle Area under section 110 of the CAA (general SIP requirements). EPA has also determined that the North Carolina SIP satisfies the criterion that it meet applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable

requirements in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. The Triangle Area has met all Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992, Calcagni Memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also, Michael Shapiro Memorandum, ("SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992," September 17, 1993), and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA

that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See, section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537; see also, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

*General SIP requirements.* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for

air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO<sub>x</sub> SIP Call, Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted timely SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also, the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no part D requirements for 8-hour standard became due prior to submission of the redesignation request. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes it has previously approved provisions in the North Carolina SIP addressing section 110 elements under the 1-hour ozone NAAQS (See, 51 FR 19834, June 3, 1986). EPA believes that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 8-hour ozone NAAQS (as well as satisfying the issues raised by the D.C. Circuit Court in the *SCAQMD* case).

*Part D requirements.* EPA has also determined that the North Carolina SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to the submission of the Area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2 is not applicable to the Triangle Area.

*Part D, subpart 1 applicable SIP requirements.* For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498). No requirements applicable for purposes of redesignation under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the Area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1)), reasonable further progress (RFP) (section 172(c)(2)), and contingency measures (section 172(c)(9)).

In addition to the fact that no part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

*Section 176 Conformity Requirements.* Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See, *Wall*, 265 F.3d 426 (upholding this interpretation). See also, 60 FR 62748 (December 7, 1995, Tampa, Florida).

*NSR Requirements.* EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment." North Carolina has demonstrated that the Triangle Area will be able to maintain the standard without a part D NSR program in effect, and therefore, North Carolina need not have a fully approved part D NSR program prior to approval of the redesignation request. North Carolina's PSD program will become effective in the Triangle Area upon redesignation to attainment. See, rulemakings for Detroit, Michigan (60



FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the Triangle Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The Triangle Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable North Carolina SIP for the Triangle Area, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. See, 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, North Carolina has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the Triangle Area (59 FR 18300, April 18, 1994; and 69 FR 56163, September 20, 2004).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

*Criteria (3)—The air quality improvement in the Triangle Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions*

EPA believes that North Carolina has demonstrated that the observed air quality improvement in the Triangle Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a

continued decrease in emissions throughout the region.

TABLE 3.—TRIANGLE AREA EMISSION REDUCTIONS PROGRAMS

*Mobile Sources*

- Tier 2 Vehicle Standards
- Heavy Duty Gasoline and Diesel Highway Vehicle Standards

*Nonroad Mobile Sources*

- Large Nonroad Diesel Engines Rule
- Spark Ignition Engines and Recreational Standards

*State and Local Measures*

- Inspection and Maintenance (I/M) Program in Clean Air Bill
- NO<sub>x</sub> SIP Call
- Clean Smokestacks Act
- Opening Burning Ban
- Air Toxics Control Program
- Prevention of Significant Deterioration
- Heavy Duty Diesel Engine Gap Filling Rule

*Criteria (4)—The area has a fully approved maintenance plan pursuant to section 175A of the CAA*

In its request to redesignate the Triangle Area to attainment, North Carolina submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of North Carolina must submit a revised maintenance plan, which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration,

monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, North Carolina's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

North Carolina selected 2005 as "the attainment year" for the Triangle Area for the purposes of demonstrating attainment of the 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 8-hour ozone standard. North Carolina began development of this attainment inventory by first developing a baseline emissions inventory for the Triangle Area. The year 2005 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2008, 2011, 2014, and 2017. Nonroad mobile emissions estimates were based on the EPA's NONROAD2005c model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2005 VOC and NO<sub>x</sub> emissions, as well as the emissions for other years, for the Triangle Area were developed consistent with EPA guidance, and are summarized in Tables 4 and 5 in the following subsection.

c. Maintenance Demonstration

The June 7, 2007, final submittal includes a maintenance plan for the Triangle Area. This demonstration: (i) Shows compliance and maintenance of the 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment year 2005 emissions levels. The year 2005 was chosen as the attainment year because it is one of the most recent three years (i.e., 2004, 2005, and 2006) for which the Triangle Area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2005 as the attainment year and includes future emission inventory projections for 2008, 2011, 2014, and 2017.

(iii) Identifies an "out year," at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, subarea NO<sub>x</sub> MVEBs were established for the last year (2017) of the maintenance plan. Additionally, North Carolina chose, through interagency consultation, to establish subarea MVEBs for the year 2008 for NO<sub>x</sub>, and to determine insignificance for VOC for



the Triangle Area. See, section VII below.

(iv) Provides the following actual and projected emissions inventories, in tons

per day (tpd) for the Triangle Area. See, Tables 4 and 5.

TABLE 4.—TRIANGLE AREA EMISSIONS OF VOC  
[Tons per day]

Source category	2005	2008	2011	2014	2017
Point .....	12.28	13.24	14.45	15.61	16.94
Area .....	67.26	72.94	78.01	82.80	87.80
Mobile* .....	47.47	39.71	35.13	30.24	27.18
Nonroad** .....	30.78	26.24	23.99	23.28	23.01
Total .....	157.79	152.13	151.58	151.93	154.93
Safety Margin .....	N/A	5.66	6.21	5.86	2.86

\* Calculated using MOBILE 6.2.

\*\* Calculated using NONROAD2005c.

TABLE 5.—TRIANGLE AREA NO<sub>x</sub> EMISSIONS  
[tons per day]

Source category	2005	2008	2011	2014	2017
Point .....	38.37	33.55	34.50	35.43	35.04
Area .....	13.02	13.65	14.24	14.87	15.55
Mobile* .....	101.68	81.66	59.00	42.78	32.59
Nonroad** .....	38.42	34.90	31.09	26.52	22.25
Total .....	191.49	163.76	138.83	119.60	105.43
Safety Margin .....	N/A	27.73	52.66	71.89	86.06

\* Calculated using MOBILE 6.2.

\*\* Calculated using NONROAD2005c.

A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. North Carolina has decided to allocate a portion of the available safety margin to the subarea NO<sub>x</sub> MVEBs for the years 2008 and 2017 for the Triangle Area, and has calculated the safety margin in its submittal. See, Tables 4 and 5, above. This allocation and the resulting available safety margin for the Triangle Area are discussed further in section VII of this proposed rulemaking.

#### d. Monitoring Network

There are currently eight monitors measuring ozone in the Triangle Area. North Carolina has committed in the maintenance plan to continue operation of these monitors in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

#### e. Verification of Continued Attainment

North Carolina has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the Triangle Area. This includes the authority to adopt,

implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

North Carolina will track the progress of the maintenance plan by performing future reviews of actual emissions for the Area using the latest emissions factors, models and methodologies. For these periodic inventories, North Carolina will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, North Carolina will re-project emissions.

#### f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also

identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the June 7, 2007, submittal, North Carolina affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. The contingency plan included in the submittal provides tracking and triggering mechanisms to determine when contingency measures are needed and a process of developing and adopting appropriate control measures. The primary trigger of the contingency plan will be a violation of the 8-hour ozone NAAQS, or when the three-year average of the fourth-highest value is equal to or greater than 0.085 ppm at any of the Triangle Area monitors. The trigger date will be 60 days from the date that the State observes a fourth-highest value that, when averaged with the two previous ozone seasons' fourth highest values, would result in a three-year average equal to or greater than

0.085 ppm. The secondary trigger will apply where no actual violation of the 8-hour ozone standard has occurred, but where the State finds monitored ozone levels indicating that an ozone NAAQS violation may be imminent. An imminent violation exists where there is a pattern. A pattern will be deemed to exist when there are two consecutive ozone seasons in which the fourth-highest values are 0.085 ppm or greater at a single monitor within the Triangle Area. The trigger date will be 60 days from the date that the State observes a fourth-highest value of 0.085 ppm or greater at a monitor for which the previous season had a fourth-highest value of 0.085 ppm or greater. Similarly, the tertiary trigger is a first alert to a potential air quality problem in the future and will not be an actual violation of the 8-hour ozone standard. The trigger will be activated when a monitor in the Triangle Area has a fourth-highest value of 0.085 ppm or greater, starting the first year after the maintenance plan has been approved. The trigger date will be 60 days from the date that the State observes a fourth-highest value of 0.085 ppm or greater at any monitor.

In the submittal, if there is a measured violation of the 8-hour ozone NAAQS in the Triangle Area, contingency measures would be adopted and implemented as expeditiously as possible, but no later than eighteen to twenty four months after the triggering event. Once the primary or secondary trigger is activated, the proposed schedule for these actions would be as follows:

- NCDENR will begin analyses, including trajectory analyses of high ozone days, and emissions inventory assessment to determine required emission control measures for attaining or maintaining the 8-hour ozone standard;
- By May 1st of the year following the ozone season in which the primary (a violation of the 8-hour ozone NAAQS occurs) or secondary trigger has been activated, NCDENR will complete sufficient analyses to begin adoption of necessary rules for ensuring attainment and maintenance of the 8-hour ozone NAAQS; and
- Rules would become State-effective by the following January 1st, unless legislative review is required.

North Carolina will consider one or more of the following contingency measures to re-attain the standard:

- NO<sub>x</sub> RACT on stationary sources in the Triangle Area;

- Diesel inspection and maintenance program<sup>2</sup>;
- Implementation of diesel retrofits programs, including incentives for performing retrofits; and
- Additional controls in upwind areas.

Once the tertiary trigger is activated, NCDENR will commence analyses including meteorological evaluation, trajectory analyses of high ozone days, and an emissions inventory assessment to understand why a fourth highest exceedance of the standard has occurred. NCDENR will then work with the local awareness program and develop an outreach plan to identify any additional voluntary measures that can be implemented. If the fourth highest exceedance occurs early in the season, NCDENR will work with entities identified in the outreach plan to determine if the measures can be implemented during the ozone season. Otherwise, NCDENR will work with the local air awareness coordinator to implement the plan for the following ozone season.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by North Carolina for the Triangle Area meets the requirements of section 175A of the CAA and is approvable.

#### **VII. What Is EPA's Analysis of North Carolina's Proposed VOC Insignificance Determination and the Proposed Subarea NO<sub>x</sub> MVEBs for the Triangle Area?**

Today's actions address two related elements regarding on-road motor vehicle emissions and the requirement to establish MVEBs. First, EPA is proposing to find that the VOC emission contribution from motor vehicles to 8-hour ozone pollution in the Triangle Area is insignificant. The result of this finding, if finalized, is that North Carolina need not develop an MVEB for

<sup>2</sup> At this time, there is not an approved method for determining emission reductions from a Diesel Inspection and Maintenance program. Therefore, there is no technical basis to award emission credits for a heavy duty diesel inspection and maintenance program in the SIP. However, we do not want to preclude future technical changes that may make awarding such emission credits possible. If it is necessary to implement contingency measures for this area, North Carolina, in coordination with EPA, will evaluate the feasibility of this program as a contingency measure at that time. If a technical basis for emission credits is not available, other contingency measures will need to be implemented.

VOC for the Triangle Area. See below for further information on the insignificance determination. Second, EPA is proposing to approve the subarea NO<sub>x</sub> MVEBs for the Triangle Area.

#### *A. Proposed VOC Insignificance Determination*

In certain instances, the Transportation Conformity Rule allows areas not to establish an MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant/precursor is an insignificant contributor to the air quality problem in an area. The general criteria for insignificance findings can be found in 40 CFR 93.109(k). Insignificance determinations are based on a number of factors, including (1) The percentage of motor vehicle emissions in context of the total SIP inventory; (2) the current state of air quality as determined by monitoring data for that NAAQS; (3) the absence of SIP motor vehicle control measures; and (4) historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for the providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule at 69 FR 40004. Specifically, the rationale is explained on page 40061 under the subsection entitled "XXIII. B. Areas With Insignificant Motor Vehicle Emissions." Any insignificance determination under review of EPA is subject to the adequacy and approval process for EPA's action on the SIP.

Through the adequacy and SIP approval process, EPA may find that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for the pollutant/precursor at issue. In the case of the Triangle Area, EPA intends to make its finding as part of EPA's final action on the redesignation request of North Carolina for the Triangle Area. Upon the effective date of EPA's adequacy finding or the publication date of the final rule for this SIP revision (i.e., which includes the VOC insignificance determination), federal regulations waive the regional emissions analysis requirements (for the purpose of transportation conformity implementation) for the relevant pollutant or precursor. Areas with insignificant regional motor vehicle emissions for a pollutant or precursor are still required to make a conformity determination that satisfies other relevant requirements. Additionally, such areas are required to satisfy the regional emissions analysis requirements for pollutants or

precursors for which EPA has not made a finding of insignificance.

The maintenance plan for the Triangle Area, included as part of the SIP revision, contains MVEBs for NO<sub>x</sub> and an insignificance determination for VOC contribution from motor vehicles to the 8-hour ozone pollution in the Triangle Area. As part of the preparation for its redesignation request, North Carolina consulted with the interagency consultation group for the Triangle Area regarding the insignificance determination for VOC. For the purposes of regional emissions analysis, the information provided by North Carolina supports EPA's proposal to determine VOC contribution to 8-hour ozone pollution from motor vehicles in the Triangle Area as insignificant. The information provided by North Carolina to EPA as part of the SIP revision addresses each of the factors listed in 40 CFR 93.109(k), and is summarized below.

The future on-road VOC emissions are projected to be less than 10 percent in the Triangle Area, in the context of the total SIP inventory. According to information provided by North Carolina, biogenic emissions account for approximately 90 percent of the VOC emissions in future years in the Triangle Area. Support for these percentages is found in Figure 4.1.6–3, located in Appendix C.3—Mobile Source Inventory Documentation on pages 4–36 of North Carolina's submittal (available in the Docket for this proposed rulemaking) which also indicates on-road VOC emissions declining by about 50 percent by 2017 and vehicle miles traveled (VMT) going up by about 25 to 30 percent by 2017. In addition, North Carolina conducted a sensitivity analysis (a photochemical model) that indicated that 8-hour ozone levels in the Triangle Area were not impacted by reductions in man-made VOC emissions (i.e., reductions from motor vehicles). Specifically, the photochemical model was run for a 39-day scenario with a modeled 30 percent reduction in man-made VOC emissions. According to the photochemical model, in the year 2009, even with anticipated increases in VMT, the mobile source inventory is still projected to be less than 6 percent of the total inventory for VOC emissions. In comparison, biogenic emissions are expected to account for at least 84 percent of the total inventory for VOC emissions. As discussed in North Carolina's submittal, the biogenic sector is the most abundant source of VOC in North Carolina and accounts for approximately 90 percent of the total VOC emissions statewide. As a result, the information provided by North

Carolina indicates that VOC contribution to 8-hour ozone pollution from motor vehicle emissions is insignificant.

With regard to the factor relating to the absence of motor vehicle control measures in the SIP, EPA considered the existence of an inspection and maintenance (I/M) program in the North Carolina SIP, and its implementation in the individual counties comprising the Triangle Area. The I/M program was not added to the North Carolina SIP as a VOC control measure, but rather, a NO<sub>x</sub> control measure. The I/M program is currently being implemented in all but one of the counties (Person County) in the Triangle Area. Implementation of the I/M program in the Triangle Area began from July 2002 through July 2004, and continues to be ongoing in the Area. In North Carolina's SIP submittal, the State explains that the I/M program was established to achieve additional reductions in NO<sub>x</sub> emissions, and that while there are incidental VOC emission reductions (approximately 2 tons per day in 2005) as a result of implementing this program in the Triangle Area, the program was not implemented to reduce VOC emissions from motor vehicles. As a result, the existence of this program in the SIP for the purpose of NO<sub>x</sub> reductions does not prohibit EPA from finding the VOC contribution to 8-hour ozone pollution from motor vehicles insignificant.

After evaluating the information provided by North Carolina and weighing the factors for the insignificance determination outlined in 40 CFR 93.109(k), particularly the biogenic contribution to the overall VOC inventory, EPA is now proposing to approve North Carolina's determination that the VOC contribution from motor vehicle emissions to the 8-hour ozone pollution for the Triangle Area is insignificant. If this finding is completed through the adequacy process (see Section VIII below) or approved through the final rulemaking on this SIP submission, the insignificance determination should be considered and specifically noted in the transportation conformity document that is prepared for this Area.

#### B. Proposed Subarea NO<sub>x</sub> MVEBs

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress and attainment demonstration, etc.) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an

MVEB is established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See, 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

North Carolina, after interagency consultation with the transportation partners for the Triangle Area, has elected to develop county-level subarea MVEBs for NO<sub>x</sub>. North Carolina is developing these MVEBs, as required, for the last year of its maintenance plan, 2017, and for an additional year, 2008. The MVEBs reflect the total on-road emissions for 2008 and 2017, plus an allocation from the available NO<sub>x</sub> safety margin for each year. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model VMT and new emission factor models. The subarea NO<sub>x</sub> MVEBs for the Triangle Area are defined in Table 6 below.

TABLE 6.—TRIANGLE SUBAREA NO<sub>x</sub> MVEBs\*  
[Kilograms per day]

County	2008	2017
Chatham .....	1,565	948
Durham .....	13,106	4,960
Franklin .....	2,048	1,139
Graham .....	4,649	1,714
Johnston .....	12,583	5,958
Orange .....	9,933	3,742
Person .....	1,359	791
Wake .....	36,615	16,352

\* Includes an allocation from the available NO<sub>x</sub> safety margins (see Table 7).

As mentioned above, North Carolina has chosen to allocate a portion of the available safety margin to the 2008 and 2017 subarea NO<sub>x</sub> MVEBs. The following table identifies the amount of

the NO<sub>x</sub> safety margin that was allotted to the 2008 and 2017 subarea NO<sub>x</sub> MVEBs.

TABLE 7.—NO<sub>x</sub> SAFETY MARGIN ALLOCATION  
[Kilograms per day]

County	2008	2017
Chatham .....	204	190
Durham .....	1,191	827
Franklin .....	186	190
Graham .....	606	343
Johnston .....	1,144	993
Orange .....	903	624
Person .....	177	158
Wake .....	3,329	2,725
Total .....	7,741	6,049

The total allocation is 7,741 kg/day (8.53 tpd) in 2008 and 6,049 kg/day (6.67 tpd) in 2017 for NO<sub>x</sub>. The remaining NO<sub>x</sub> safety margin after allocation of some of the safety margin to the MVEBs for the Triangle Area is 19.20 tpd in 2008 and 79.39 tpd in 2017.

Through this rulemaking, EPA is proposing to approve the 2008 and 2017 subarea MVEBs for NO<sub>x</sub> for the Triangle Area because EPA has determined that the Area maintains the 8-hour ozone standard with the emissions at the levels of the budgets. As mentioned above, these MVEBs are subarea MVEBs for each individual county in the Triangle Area. Once the new subarea MVEBs for the Triangle Area (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations.

#### VIII. What Is an Adequacy Determination?

As discussed above, the MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB. Additionally, the transportation conformity rule (see 93.109(k)) allows for areas not to establish a MVEB for a particular pollutant or precursor if it can be demonstrated that motor vehicle emissions contributions do not significantly contribute to an area's pollution. North Carolina's submittal for this area establishes MVEBs for NO<sub>x</sub> and provides an insignificance determination for VOC contribution.

Under section 176(c) of the CAA, new transportation projects, such as the

construction of new highways, must "conform" to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not "conform," most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining "adequacy" of an MVEB, including EPA's determination that an MVEB need not be established because of an insignificance determination, are set out in 40 CFR 93.118(e)(4). The process for determining "adequacy" consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; transportation conformity rule amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). EPA

follows this guidance and rulemaking in making its adequacy determinations. EPA must also use a similar process to determine the adequacy of an insignificance determination that is submitted by a state as a part of a control strategy SIP or maintenance plan. Additional information on the adequacy process for both MVEBs and insignificance determinations is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

#### IX. What Is the Status of EPA's Adequacy Determination for the Subarea NO<sub>x</sub> MVEBs for the Years 2008 and 2017, and the VOC Insignificance Determination?

As discussed earlier, North Carolina's maintenance plan submission includes new county-level subarea NO<sub>x</sub> MVEBs for the Triangle Area for the years 2008 and 2017. Additionally, the maintenance plan included a VOC insignificance determination for the entire Triangle Area, and therefore, no MVEB for VOC is included as part of the SIP revision. EPA reviewed both the NO<sub>x</sub> MVEBs and the VOC insignificance determination through the adequacy process. The North Carolina SIP submission, including the Triangle subarea NO<sub>x</sub> MVEBs and the VOC insignificance determination, was open for public comment on EPA's adequacy Web site on March 21, 2007, found at: <http://www.epa.gov/otaq/stateresources/transconf/currsubs.htm>. The EPA public comment period on adequacy of the 2008 and 2017 subarea NO<sub>x</sub> MVEBs, and VOC insignificance determination closed on April 20, 2007. EPA did not receive any comments on the adequacy of the MVEBs or the VOC insignificance determination, nor did EPA receive any requests for the SIP submittal.

EPA intends to make its determination on the adequacy of the 2008 and 2017 subarea NO<sub>x</sub> MVEBs, and the VOC insignificance determination for the Triangle Area for transportation conformity purposes in the final rulemaking on the redesignation of the Triangle Area. If EPA finds the 2008 and 2017 subarea NO<sub>x</sub> MVEBs, and the VOC insignificance determination adequate or approves these MVEBs and the VOC insignificance determination in the final rulemaking action, the new MVEBs for NO<sub>x</sub> must be used, and the VOC insignificance determination should be noted, for future transportation conformity determinations. If the new 2008 and 2017 subarea NO<sub>x</sub> MVEBs are

found adequate, and both the NO<sub>x</sub> MVEBs and the related VOC insignificance determination are approved in the final rulemaking, the NO<sub>x</sub> MVEBs and the VOC insignificance determination will be effective on the date of publication of EPA's final rulemaking in the **Federal Register**. For required regional emissions analysis years that involve the year 2016 or before, the applicable budget for the purposes of conducting transportation conformity will be the new 2008 subarea NO<sub>x</sub> MVEBs for the Triangle Area. For required regional emissions analysis years that involve 2017 or beyond, the applicable budgets will be the new 2017 subarea NO<sub>x</sub> MVEBs. Both the 2008 and 2017 subarea NO<sub>x</sub> MVEBs are defined in section VII of this proposed rulemaking. More detail on the VOC insignificance determination can be found in section VII of this proposed rulemaking as well.

**X. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Proposed Approval of the 2008 and 2017 Subarea NO<sub>x</sub> MVEBs, and the Proposed VOC Insignificance Determination for the Triangle Area**

EPA is proposing to make the determination that the Triangle Area has met the criteria for redesignation from nonattainment to attainment for the 8-hour ozone NAAQS. Further, EPA is proposing to approve North Carolina's June 7, 2006, SIP submittal including the redesignation request for the Triangle Area. EPA believes that the redesignation request and monitoring data demonstrate that the Triangle Area has attained, and will continue to maintain the 8-hour ozone standard.

EPA is also proposing to approve the maintenance plan for the Triangle Area included as part of the June 7, 2006, SIP revision. The maintenance plan includes subarea NO<sub>x</sub> MVEBs for 2008 and 2017, and a VOC insignificance determination for motor vehicles' contribution to the ozone pollution in this Area, among other requirements. EPA is proposing to approve the 2008 and 2017 subarea NO<sub>x</sub> MVEBs for the Triangle Area because the maintenance plan demonstrates that in light of expected emissions for all other source categories, the Triangle Area will continue to maintain the 8-hour ozone standard. EPA is also proposing to approve the insignificance determination for the VOC contribution from motor vehicle emissions to the 8-hour ozone pollution for the Triangle Area.

Further as part of today's action, EPA is describing the status of its adequacy

determination for the 2008 and 2017 subarea NO<sub>x</sub> MVEBs, and VOC insignificance determination, in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the publication date for the final rule for this action, the transportation partners will need to demonstrate conformity to the new subarea NO<sub>x</sub> MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005. Additionally, the transportation partners should note EPA's finding of adequacy and approval for the VOC insignificance determination for future conformity determinations.

**XI. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997); because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**40 CFR Part 81**

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

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

Dated: September 25, 2007.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. E7-19513 Filed 10-2-07; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2007-0546; FRL-8151-6]

#### Thiabendazole; Threshold of Regulation Determination

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to establish by rule that there is no need for a tolerance or tolerance exemption under the Federal Food Drug and Cosmetic Act (FFDCA) for the use of the fungicide thiabendazole as a seed treatment on dry peas. This determination is based on EPA's finding that any residues that remain in food from this use will be both non-detectable and below the level of regulatory concern.

**DATES:** Comments must be received on or before December 3, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0546, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2007-0546. EPA's policy is that all comments received will be included in the docket

without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

**Docket:** All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Susan Stanton, Registration Division

(7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5218; fax number: (703) 305-0599; e-mail address: [stanton.susan@epa.gov](mailto:stanton.susan@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 code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 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. What Should I Consider as I Prepare My Comments for EPA?

1. **Docket.** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0546. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.