

responsibilities between the Federal Government and Indian tribes.

### Energy Effects

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

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

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

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

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

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

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

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

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

■ 2. Add temporary § 165.T01–099 to read as follows:

#### § 165.T01–099 Safety Zone; Wiscasset, Maine, Demolition of Maine Yankee former containment building.

(a) *Location.* The following area is a safety zone: All navigable waters within 1000-feet around the former Maine Yankee containment building from a point located at Latitude 43°57'00" N, Longitude 069°41'42" W (NAD 83).

(b) *Effective date.* This rule is effective from 12:01 a.m. EDT on September 3, 2004 to 11:59 p.m. e.d.t. on September 30, 2004.

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP) Portland, Maine or his designated representative.

(2) All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. Designated U.S. Coast Guard representatives include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative. Upon being hailed by U.S. Coast Guard personnel or a U.S. Coast Guard Vessel, via siren, radio, flashing light, or other means, those hailed shall proceed as directed.

(3) Entry or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

Dated: September 2, 2004.

**Gregory D. Case,**

*Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Portland, Maine.*  
[FR Doc. 04–20927 Filed 9–16–04; 8:45 am]

**BILLING CODE 4910–15–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[OAR–2003–0083; FRL–7815–3]

#### Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Las Vegas, NV Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes the boundaries for the portion of Clark County, Nevada that is designated nonattainment for the 8-hour ozone national ambient air quality standard and designates the remaining portions of Clark County, including portions of the Moapa River Indian Reservation and the Fort Mojave Indian Reservation, as attainment for the 8-hour ozone standard. In a final rule published April 30, 2004, EPA had previously announced that all of Clark County would be designated nonattainment for the standard. EPA subsequently deferred the effective date of that designation to provide the State, affected Tribes, and EPA time to determine whether an adjustment to the boundaries of the Las Vegas nonattainment area was appropriate. Based on additional analyses submitted by the State and the Moapa Band of Paiutes, we conclude that the boundary of the Las Vegas nonattainment area should be adjusted. Through this notice we are revising the designations for Clark County to reflect these adjustments. The revised designation defines a smaller nonattainment area around the City of Las Vegas and designates the remainder of Clark County with the rest of the State as "unclassifiable/attainment."

**EFFECTIVE DATE:** This final rule is effective on September 13, 2004.

**ADDRESSES:** The EPA has established dockets for this action under Docket ID No. OAR–2003–0083 (Designations). All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742. In addition, we have placed a copy of the rule and a variety of materials regarding designations on EPA's designation Web site at: <http://www.epa.gov/oar/oaqps/glo/designations> and on the Tribal Web site at: <http://www.epa.gov/air/tribal>. In addition, the public may inspect the rule and technical support at the following locations:

U.S. Environmental Protection Agency, Region IX, Air Division, Planning Office, 75 Hawthorne Street, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** John J. Kelly, Planning Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105. The telephone number is (415) 947-4151. Mr. Kelly can also be reached via electronic mail at [kelly.johnj@epa.gov](mailto:kelly.johnj@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **I. What Action Is EPA Taking Today?**

EPA is announcing and promulgating revised designations for areas within Clark County, Nevada with respect to attainment or nonattainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This action modifies the designation for Clark County announced in our final 8-hour ozone designations rule published April 30, 2004. 69 FR 23858. In that final rule we designated all of Clark County as nonattainment for the 8-hour ozone NAAQS and provided the designation would be effective June 15, 2004. *See* 69 FR at 23919-20 (revising 40 CFR 81.329). We subsequently deferred the effective date for the Clark County designation until September 13, 2004 to allow further consideration of the appropriate nonattainment boundary. 69 FR 34076 (June 18, 2004). With today's action, we are designating a portion of Clark County as nonattainment for the 8-hour ozone NAAQS and the

remainder of the County with the rest of the State as "unclassifiable/attainment." The effective date of this designation is September 13, 2004.

#### **II. What Is the Background for This Action?**

On April 15, 2004, the EPA Administrator signed a final rule announcing designations under the 8-hour ozone NAAQS. 69 FR 23875 (April 30, 2004). In that action we designated Clark County as nonattainment and provided that this designation would become effective on June 15, 2004.

Following that notice, the State submitted additional information explaining that the boundaries of the area to be designated nonattainment should be reconsidered because of the unique circumstances that prevented the State from being able to evaluate the appropriate boundaries and submit an informed recommendation to EPA prior to the April 15, 2004 final 8-hour ozone designations. Letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection, to Michael O. Leavitt, Administrator, U.S. Environmental Protection Agency (June 9, 2004).<sup>1</sup> In the June 9, 2004 letter the State explained that it did not have time to make an appropriate recommendation regarding the boundaries of the nonattainment area in Clark County because it was not discovered until late February 2004 that any portion of Nevada would be designated nonattainment.

Based on the unusual history of the Clark County designation<sup>2</sup> and the subsequent information provided by the State, we concluded that the relevant factors for defining a nonattainment area might support a different boundary recommendation than the one originally submitted by the State and that a deferral of the effective date for the designation was reasonable to allow the State, Tribes, and EPA time to determine whether such an adjustment was reasonable. 69 FR at 34076.

Following EPA's decision to defer the effective date, EPA has worked closely with the State, County and Tribes to collect additional information and analyze the appropriate boundaries for the nonattainment area surrounding Las Vegas. We have received boundary recommendations with detailed information and analysis from the Nevada Division of Environmental Protection (NDEP or State) and from the Moapa Band of Paiutes (Moapa or

Tribe).<sup>3</sup> Our analysis of these submittals is described in the Technical Support Document (TSD) for today's action and is summarized below. All of these submittals along with our TSD are available in the docket.

#### **III. What Are the Statutory Requirements for Designating Areas and What Is EPA's Policy and Guidance for Determining Nonattainment Boundaries for the 8-Hour Ozone NAAQS?**

This section describes the statutory definition of nonattainment and EPA's guidance for determining air quality attainment and nonattainment areas for the 8-hour ozone NAAQS. In March 2000<sup>4</sup> and July 2000<sup>5</sup> we issued guidance on how to determine the boundaries for nonattainment areas. In that guidance, we rely on the CAA definition of a nonattainment area in section 107(d)(1)(A)(i) as an area that is violating an ambient standard or is contributing to a nearby area that is violating the standard. If an area meets this definition, EPA is obligated to designate the area as nonattainment.

In making designations and classifications, we use the most recent three years of monitoring data (*i.e.*, 2001-2003), although other relevant years of data may be used in certain circumstances.<sup>6</sup> We treat data recorded by an ozone air quality monitor as representative of the air quality throughout the area in which the monitor is located and generally use the county as the basic jurisdictional unit in determining the extent of the area represented by the monitoring data. As a result, we typically designate the entire county and any nearby contributing area as nonattainment if an ozone monitor was measuring a violation of the standard based on the 2001-2003 data.

For violating monitors located in a Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (CMSA), however, we typically designate the entire MSA or CMSA as nonattainment. Section 107(d)(4) of the Clean Air Act established the MSA or

<sup>3</sup> Although we did not receive submittals from the other Tribes in Clark County, we consulted with them by phone to determine the appropriate designation of their lands.

<sup>4</sup> Memorandum from John S. Seitz, "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards" (March 28, 2002).

<sup>5</sup> Memorandum from John S. Seitz, "Guidance on 8-Hour Ozone Designations for Indian Tribes" (July 18, 2000).

<sup>6</sup> To determine whether an area is attaining the 8-hour ozone NAAQS, EPA considers the most recent three consecutive years of data in accordance with 40 CFR part 50, appendix I.

<sup>1</sup> This letter supplements an earlier letter dated May 21, 2004, from Governor Kenny C. Guinn to Administrator Leavitt.

<sup>2</sup> For a detailed discussion on this history, *see* our June 18, 2004 deferral notice at 69 FR 34076.

CMSA as the presumptive boundary for nonattainment areas when we promulgated our designation actions in 1991 for the 1-hour ozone standard. In our guidance on determining nonattainment area boundaries for the 8-hour ozone standard, we advised States that if a violating monitor is located in an MSA or CMSA (as defined by the Office of Management and Budget (OMB) in 1999), the larger of the 1-hour ozone nonattainment area or the MSA or CMSA should be considered in determining the boundary of a nonattainment area.<sup>7</sup> The MSA or CMSA defined by OMB generally shares economic, transportation, population, and other linkages that are similar to air quality related factors that produce ozone pollution. EPA concluded that using the MSA or CMSA as the presumptive boundary “best ensure[s] public health protection from the adverse effects of ozone pollution caused by population density, traffic and commuting patterns, commercial development, and area growth.” Memorandum from John S. Seitz, “Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards” (March 28, 2002). This boundary, however, is only presumptive; a State may propose area boundaries smaller or larger than the presumptive area, and EPA will consider alternative boundary recommendations on a case-by-case basis to assess whether the recommendation is consistent with section 107(d)(1) of the Act.<sup>8</sup> *Id.*

Our guidance identifies the factors to be considered in making and assessing a recommendation to designate an area other than the presumptive area. The factors can be used to justify including additional counties, excluding counties within the presumptive area, or, as is the case for the Las Vegas area, defining

an area that is less than the full county. The factors were compiled based on our experience in designating areas for the ozone standard in March 1978 and November 1991 and by looking to the CAA, section 107(d)(4), which states that the Administrator and the Governor shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport. State and local agencies also had extensive input into compiling the factors.

The factors are:

- (1) Emissions and air quality in adjacent areas (including adjacent MSAs and CMSAs),
- (2) Population density and degree of urbanization including commercial development (significant difference from surrounding areas),
- (3) Monitoring data representing ozone concentrations in local areas and larger areas (urban or regional scale),
- (4) Location of emission sources (emission sources and nearby receptors should generally be included in the same nonattainment area),
- (5) Traffic and commuting patterns,
- (6) Expected growth (including extent, pattern, and rate of growth),
- (7) Meteorology (weather/transport patterns),
- (8) Geography/topography (mountain ranges or other air basin boundaries),
- (9) Jurisdictional boundaries (*e.g.*, counties, air districts, existing 1-hour nonattainment areas, Reservations, etc.),
- (10) Level of control of emission sources, and
- (11) Regional emissions reductions (*e.g.*, NO<sub>x</sub> State Implementation Plan (SIP) Call or other enforceable regional strategies).<sup>9</sup>

#### **IV. What Are the Nonattainment Boundaries Within Clark County and How Do These Comport With EPA Policy and Guidance?**

##### *A. Initial Designation of Clark County*

In July 2003, the State submitted its recommended designations for the 8-hour ozone designations. *See* Letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection to Wayne Nastri, Regional Administrator, U.S. EPA, Region IX (July 10, 2003). Based on the monitoring data provided by the State for the period of 2000 through 2002, the State concluded that all monitors within the State were showing compliance with the

8-hour ozone NAAQS. On December 3, 2003, EPA agreed with the State's recommendation not to designate any Nevada area as nonattainment for the 8-hour ozone standard. *See* Letter from Wayne Nastri, Regional Administrator, U.S. EPA, Region IX, to Hon. Kenny C. Guinn, Governor of Nevada (December 3, 2004). In that letter EPA noted that the final designation determination would be based on monitoring data and design values for the period 2001 through 2003, but that based on our preliminary review of the air quality monitoring data for the 2003 ozone season, there were no areas in Nevada violating the 8-hour ozone standard. *Id.*

In mid-February 2004, EPA discovered that the July 10, 2003 recommendation from the State had failed to include complete monitoring data for 2001. This overlooked data, in combination with the new 2003 data, resulted in a 2001–2003 design value over the applicable standard at one of the monitors (Joe Neal) in the Las Vegas area of Clark County. EPA contacted the State and described that, by default, the MSA that included Clark and Nye Counties in Nevada and Mohave County in Arizona should be recommended for designation as nonattainment.

Arizona and Nevada were able to prepare an analysis that supported the exclusion of Nye and Mohave Counties from the nonattainment area. *See* Letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection, to Wayne Nastri, Regional Administrator, U.S. EPA, Region IX (April 12, 2004) (transmitting NDEP's report entitled “Nevada Air Quality Designations and Boundary Recommendations for the 8-Hour Ozone National Ambient Air Quality Standard” (March 26, 2004)); Letter from Stephen A. Owens, Director, Arizona Department of Environmental Quality, to Wayne Nastri, Regional Administrator, U.S. EPA, Region IX (March 26, 2004) (transmitting report entitled “Arizona Boundary Recommendations for the 8-Hour Ozone National Ambient Air Quality Standard” (March 26, 2004)). As a result, three days before the EPA deadline for making designations, the State recommended that Clark County be designated nonattainment.<sup>10</sup> *Id.*

<sup>10</sup> As the State subsequently claimed, had NDEP and Clark County discovered earlier that the County should be designated nonattainment, it would have further analyzed the appropriate boundaries for the nonattainment area within the 8000-square mile County. Given the late discovery, however, the State and county could not provide the necessary analysis and defaulted to the County boundaries. *See* 69 FR 34076 (June 18, 2004) (Deferring effective date to allow for additional analysis of appropriate boundary).

<sup>7</sup> These same presumptions generally apply to the designation of Indian country. Thus, if the Indian country has a violating monitor or even if there is no air quality monitor but the area is located within an MSA or CMSA with a violating monitor, it will be presumed to be nonattainment. *See* Memorandum from John S. Seitz, “Guidance on 8-Hour Ozone Designations for Indian Tribes” (July 18, 2000).

<sup>8</sup> For Indian country, a Tribe may, but is not required to, submit a recommendation on the designation boundaries. In cases where Tribes do not make designation recommendations, EPA, in consultation with the Tribes, will promulgate the designation it determines is appropriate. “It is Agency policy that EPA ‘\* \* \* in keeping with the Federal trust responsibility, will assure that tribal concerns and interests are considered whenever EPA's action and/or decisions may affect reservation environments.’ (EPA 1984 Indian Policy).” Memorandum from John S. Seitz, “Guidance on 8-Hour Ozone Designations for Indian Tribes” (July 18, 2000).

<sup>9</sup> *See* Memorandum from John S. Seitz, “Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards” (March 28, 2002).

EPA's April 30, 2004 final rule announcing the 8-hour ozone designations for the country designated all of Clark County as nonattainment and the rest of State as "unclassifiable/attainment." 69 FR 23858, 23919–20 (April 30, 2004).

#### *B. Revised Boundary Recommendation for the Las Vegas Nonattainment Area*

On August 2, 2004, the State submitted a revised recommendation for the boundary of the nonattainment area surrounding Las Vegas. Letter from Leo Drozdoff, Acting Administrator, NDEP, to Wayne Natri, Regional Administrator. U.S. EPA, Region IX. Based on an analysis of the 11 factors outlined in EPA's guidance, the State recommended that the following hydrographic areas<sup>11</sup> within Clark County be designated nonattainment: Ivanpah Valley (hydrographic areas 164A, 164B, 165 and 166), Eldorado Valley (hydrographic area 167), Las Vegas Valley (hydrographic area 212), Colorado River Valley (hydrographic area 213), Paiute Valley (hydrographic area 214), Apex Valley (hydrographic areas 216 and 217), and a portion of Moapa Valley (hydrographic area 218).<sup>12</sup> The State recommended that the remainder of the County be designated "unclassifiable/attainment" because these areas:

- Are sparsely populated, containing less than two percent of the County population;
- Were not found to impact the recommended nonattainment area;
- Contain insignificant point and mobile sources of emissions;
- Are separated geographically and topographically from the recommended nonattainment area; and
- Are expected to have low regional ozone levels based on monitoring data.

The areas recommended as part of the nonattainment area contain all of the monitors reading elevated ozone concentrations, all of the major transportation corridors, nearly all of the major sources of ozone precursors in the County, and the vast majority of the County's population. The State considered likely transport of emissions in and out of the Las Vegas Valley and

recommended including all areas with sources that may contribute to violations of the 8-hour standard in Las Vegas as well as surrounding areas that may be impacted by emissions from sources in and around Las Vegas.

#### *C. Designation Recommendation for the Moapa River Reservation*

We also received recommendations from the Moapa Band of Paiutes regarding designation of the Moapa River Indian Reservation located within Clark County, northeast of Las Vegas. Letter from Philbert Swain, Chairman, to John Kelly, U.S. EPA, Region IX (July 30, 2004); Letter from Thomas R. Wood, Stoel Rives, to Paul Cort, U.S. EPA, Region IX (Aug. 19, 2004) (transmitting supplement to the July 30, 2004 analysis). The Reservation overlaps with the hydrographic areas recommended as nonattainment by the State (Apex and Moapa Valleys), but the Tribe recommended designating the Reservation as attainment because:

- Emissions at the Reservation do not significantly impact local air quality;
- Emissions do not contribute to nonattainment in the Las Vegas Valley; and
- The area lacks any economic integration with Las Vegas.

#### *D. Designation of Other Reservations Within Clark County*

Two other reservations are within the area recommended by the State as the nonattainment area. Specifically, in addition to the Moapa River Indian Reservation of the Moapa Band of Paiutes described above, the area includes the reservation lands of the Las Vegas Paiute and a small portion of the Fort Mojave Indian Reservation of the Fort Mojave Indian Tribe. We did not receive recommendations from the Las Vegas Paiute or the Fort Mojave Tribes, so we have prepared an independent assessment in accordance with our guidance and consulted with the Tribes to promulgate designations for these Reservations.

#### *E. Summary of Final Designations*

EPA agrees with the recommendation of the State to narrow the nonattainment designation for the Las Vegas area to the portion of Clark County defined by hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217 and 218.<sup>13</sup> We therefore will designate the

remainder of the County, as we have designated the rest of the State, as "unclassifiable/attainment" for the 8-hour ozone NAAQS.

The State has taken a broad and conservative approach in defining the portions of the 8,000-square mile County that cause or contribute to violations of the standard in the Las Vegas Valley. These areas include all portions of the County having any elevated concentrations of ozone and nearly every major source in the County. The areas recommended as part of the nonattainment area include 98 percent of the population and all of the urbanized and projected growth areas within the County. Finally, the area recommended for nonattainment includes the major traffic and commuting corridors within the County.

We also agree that the remainder of the County is reasonably excluded from the nonattainment area. It is primarily public land, with few sources, and no urbanization or likelihood of growth. Air quality in these surrounding areas is not impaired with respect to the 8-hour ozone NAAQS and there is no likelihood of contribution to the ozone problem in the Las Vegas area due to the lack of emission sources, geographical barriers and prevailing weather patterns.<sup>14</sup>

The area recommended by the State for nonattainment overlaps with the reservation land of three Tribes: the Moapa Band of Paiutes, located in Moapa Valley northeast of Las Vegas; the Las Vegas Band of Paiutes, located within the Las Vegas Valley; and the Fort Mojave Indian Tribe, located at the southern tip of the County near the Arizona and California state lines. As noted above, we received a designation recommendation from the Moapa Band of Paiutes that argued for designating the Reservation in Moapa Valley as attainment. We consulted with the other Tribes but did not receive formal recommendations.

In accordance with our trust responsibilities for these Tribes, we independently evaluated whether these areas should be included or excluded

and the Moapa Band of the Paiute Tribal Land" from the recommended nonattainment area. The State's recommendation is silent with respect to the Fort Mojave Indian Reservation. EPA interprets the State's submittal to leave the designation recommendations and decisions for all Tribal lands within the County to EPA and the respective Tribes. As such, we have independently assessed the proper designations for these areas and presume that it is fair to say that we "agree" with the recommendation of the State independent of the designations for the Tribal areas.

<sup>14</sup> For a more detailed discussion of the 11 factors supporting exclusion of these areas, see the TSD for today's action.

<sup>11</sup> A hydrographic area is a natural or manmade stream drainage area or basin. These geographic areas are delineated by the Nevada Division of Water Resources and have long been used by the State and EPA for defining and designating air basins within the State. See 67 FR 12474 (March 19, 2002). A map of these areas is included in the State's August 2, 2004 submittal, which can be found in the docket.

<sup>12</sup> The TSD contains a map showing these hydrographic areas and the boundary of the nonattainment area, as well as our review of the State's analysis.

<sup>13</sup> As described above, portions of the Moapa River Indian Reservation and the Fort Mojave Indian Reservation are located within the hydrographic basins the State recommended EPA use to define the nonattainment area. The State's August 2, 2004 submittal, however, expressly "excludes the Las Vegas Paiute Tribal Community,

from the nonattainment area within Clark County. We concluded that the Las Vegas Paiute land, given its location within the Las Vegas Valley, its meteorologic and economic integration with Las Vegas, and the impact on air quality within the Reservation due to emissions from Las Vegas, should be included in the Las Vegas 8-hour ozone nonattainment area. The other Tribal areas, however, are reasonably excluded.<sup>15</sup>

The Moapa Band of Paiutes provided significant information demonstrating that: (1) The Reservation is sufficiently removed from the sources of emissions in and around Las Vegas such that air quality in the Reservation has not been adversely impacted, (2) the area is not economically integrated with the growth of the Las Vegas area, and (3) emissions from sources within the tribal area do not contribute to air quality problems in or around Las Vegas due to prevailing wind patterns. For these reasons, we agree the Moapa River Indian Reservation should be excluded from the Las Vegas 8-hour ozone nonattainment area.

The Fort Mojave Reservation is also reasonably excluded from the Las Vegas 8-hour ozone nonattainment area. The Reservation is located approximately 80 miles from the Las Vegas area in an upwind direction. Monitors located in this portion of the State have not measured elevated ozone concentrations. There is no likelihood of economic integration with Las Vegas and the Reservation does not have sources that contribute to nonattainment in the Las Vegas area.

#### **V. What Action Is EPA Taking To Designate These Portions of Clark County?**

We are revising 40 CFR 81.329 to specify the revised boundaries of the nonattainment area within Clark County, Nevada. As explained above, the Las Vegas nonattainment area will include hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218. From this area we are excluding that portion within the Moapa River Indian Reservation and the Fort Mojave Indian Reservation. The remainder of Clark County, along with these reservations, will be included with the rest of the State as “unclassifiable/attainment.” EPA is making this change without notice and comment in accordance with section 107(d)(2) of the Clean Air Act, which exempts the promulgation of these designations from the notice and

comment provisions of the Administrative Procedure Act.

The effective date for these designations codified in 40 CFR 81.329 will be September 13, 2004. Section 553(d) of the Administrative Procedure Act generally provides that rulemakings shall not be effective less than 30 days after publication except where a substantive rule relieves a restriction or where the agency finds good cause for an earlier date. 5 U.S.C. 553(d)(1) and (3). Without expediting the effective date for today’s action, all of Clark County would be designated nonattainment effective September 13, 2004. This designation could create significant confusion and potential substantive obligations for portions of Clark County that are being removed from the nonattainment area in today’s action. Even in the areas of Clark County that continue to be considered nonattainment in today’s action, having two effective dates will create confusion regarding deadlines for submittals and may serve only to delay requirements for planning. The effective date for today’s action is therefore justified under the APA because: (1) It relieves a restriction by narrowing the boundaries of the Las Vegas nonattainment area that would otherwise become effective on September 13, 2004; and (2) it is in the public interest to avoid confusion and delay associated with overlapping designations and effective dates.

As noted in our June 18, 2004 deferral action (69 FR 34076), we do not intend to extend the deadline for state implementation plan submission for the Las Vegas nonattainment area. EPA will address this deadline in a subsequent action but believes it is reasonable to require submission according to the same schedule to which the area would be subject without the deferred effective date. Likewise, the time by which attainment occurs should not be affected by the deferral.

#### **VI. Final Action**

The EPA is revising the 8-hour ozone designations for Clark County, Nevada. We are defining new boundaries for the Las Vegas nonattainment area and including the remaining portions of the County with the rest of the State as “unclassifiable/attainment.” We are amending 40 CFR 81.329 to reflect these revised designations.

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

##### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency

must determine whether the regulatory action is “significant” and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a “significant regulatory action” because none of the above factors applies. As such, this final rule was not formally submitted to OMB for review.

##### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule revises the nonattainment designations for Clark County, Nevada that were promulgated on April 15, 2004. The present final rule does not establish any new information collection burden apart from that required by law. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for

<sup>15</sup> A fuller analysis of the 11 factors for excluding these areas is provided in the TSD for this action.

EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (see 13 CFR part 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This rule revises the boundaries of the Las Vegas 8-hour ozone nonattainment area in Clark County, Nevada. The revision narrows the boundaries of the nonattainment area and will not impose any new requirements on small entities. After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are

inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's final action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of \$100 million or more in any one year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the 8-hour NAAQS for ozone (62 FR 38894; July 18, 1997), therefore, no UMRA analysis is needed. In this rule, EPA is narrowing the definition of the Las Vegas nonattainment area in Clark County, Nevada. No new controls will be imposed as a result of this action. Thus, this Federal action will not impose mandates that will require expenditures of \$100 million or more in the aggregate in any one year.

### E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have "Tribal implications" as specified in Executive Order 13175. This rule concerns the classification and designation of areas as attainment or nonattainment for the 8-hour ozone standard. The CAA provides for States to develop plans to regulate emissions of air pollutants within their jurisdictions. The TAR gives Tribes the opportunity to develop and implement CAA programs such as programs to attain and maintain the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

This final rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, EPA did conduct outreach with Tribal representatives regarding the designations. These discussions informed EPA about key Tribal concerns regarding designations as the rule was under development.

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

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this risk assessment are contained in the National Ambient Air Quality Standards for Ozone, Final Rule (62 FR 38855–38896, July 18, 1997; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

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

This rule is not subject to Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Pub. L. 104–113,

section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States on or before the effective date of this rule. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 13, 2004.

*K. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) When the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." The rule designating areas for the 8-hour ozone standard was "nationally applicable" within the meaning of section 307(b)(1) since it established designations for all areas of the United States for the 8-hour ozone NAAQS. Since today's final action revises one of the designations made in

that nationwide rulemaking, any petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit. At the core of the designations rulemaking is EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the CAA. In determining which areas should be designated nonattainment (or conversely, should be designated "unclassifiable/attainment"), EPA used a set of 11 factors that it applied consistently across the United States. For the same reasons, the Administrator also determined that the final designations are of nationwide scope and effect for purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of the designations rulemaking extend to numerous judicial circuits since the designations apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the D.C. Circuit. Thus, any petitions for review of this final action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

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

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

Dated: September 10, 2004.

**Michael O. Leavitt,**  
Administrator.

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

**PART 81—[AMENDED]**

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

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

**Subpart C—[AMENDED]**

■ 2. In § 81.329, the table entitled "Nevada-Ozone (8-Hour Standard)" is revised to read as follows:

**§ 81.329 Nevada.**

\* \* \* \* \*



## NEVADA—OZONE (8-HOUR STANDARD)

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Las Vegas, NV: Clark County (part) ..... That portion of Clark County that lies in hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218 but excluding the Moapa River Indian Reservation and the Fort Mojave Indian Reservation. <sup>b</sup>	(2)	Nonattainment .....	(2)	Subpart 1.
Rest of State .....	.....	Unclassifiable/Attainment.		
Carson City Churchill County Clark County (part) remainder Douglas County Elko County Esmeralda County Eureka County Humboldt County Lander County Lincoln County Lyon County Mineral County Nye County Pershing County Storey County Washoe County (Reno Area) White Pine County				

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

<sup>b</sup> The use of reservation boundaries for this designation is for purposes of CAA planning only and is not intended to be a federal determination of the exact boundaries of the reservations. Nor does the specific listing of the Tribes in this table confer, deny or withdraw Federal recognition of any of the Tribes listed or not listed.

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

<sup>2</sup> The effective date is September 13, 2004.

\* \* \* \* \*

[FR Doc. 04-20973 Filed 9-16-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2004-0155; FRL-7368-1]

### Dinotefuran; Pesticide Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of dinotefuran *N*-methyl-*N*'-nitro-*N*'-[(tetrahydro-3-furanyl)methyl]guanidine and its metabolites DN [1-methy-3-(tetrahydro-3-furylmethyl)guanidine and UF [1-methyl-3-(tetrahydro-3-furylmethyl)urea], expressed as dinotefuran in or on vegetable, leafy, except Brassica, group 4. Mitsui Chemicals, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective September 17, 2004. Objections and requests for hearings must be received on or before November 16, 2004.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP-2004-0155. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8291; e-mail address: [kumar.rita@epa.gov](mailto:kumar.rita@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

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

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