

demonstration, plan, and maintenance plan; Utah's Rule R307-110-31, "Section X, Vehicle Inspection and Maintenance Program, Part A," which incorporates general requirements and applicability for motor vehicle emissions inspections; and Utah's Rule R307-110-34, "Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County," which incorporates a revised vehicle inspection and maintenance program for Utah County. The Governor's April 1, 2004 submittal also stated that the prior July 11, 1994 submittal of Utah's Rule R307-1-4.12, "Emissions Standards for Residential Solid Fuel Burning Devices and Fireplaces" to restrict woodburning in Utah County, remains part of her April 1, 2004 submittal and requested that Utah's Rule R307-301, "Oxygenated Gasoline Program," be eliminated from the Federally-approved SIP. We note that on September 20, 1999, the Governor submitted Utah Rules R307-302-3 and -4, which together comprise a re-numbered and re-titled version of R307-1-4.12. The text of Rules R307-302-3 and -4 is identical to the text of Rule R307-1-4.12 that the Governor submitted on July 11, 1994.

EPA is proposing to approve the Provo area's attainment demonstration and plan, the request for redesignation to attainment for the Provo area, the maintenance plan, the transportation conformity MVEBs for 2014 and 2015, the revisions to Rule R307-110-12, the revisions to Rule R307-110-31, the revisions to Rule R307-110-34, Rules R307-302-3 and -4, and the request to remove Rule R307-301 from the Federally-approved SIP. EPA is also identifying the transportation conformity MVEB for the year 2000, which is derived from the attainment year emission inventory in the attainment plan. This action is being taken under section 110 of the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties

interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**DATES:** Written comments must be received on or before December 2, 2005.

**ADDRESSES:** Submit your comments, identified by RME Docket Number R08-OAR-2005-UT-0006, by one of the following methods:

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

- Agency Web site: <http://docket.epa.gov/rmepub/index.jsp>. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: [long.richard@epa.gov](mailto:long.richard@epa.gov) and [russ.tim@epa.gov](mailto:russ.tim@epa.gov).

- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 200, Denver, Colorado 80202-2466.

- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 200, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 200, Denver, Colorado 80202-2466, phone (303) 312-6436, and e-mail at: [russ.tim@epa.gov](mailto:russ.tim@epa.gov)

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of the **Federal Register**.

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

Dated: October 24, 2005.

**Robert E. Roberts,**

*Regional Administrator, Region VIII.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[R03-OAR-2005-VA-0007; FRL-7993-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the City of Fredericksburg, Spotsylvania County, and Stafford County Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The Virginia Department of Environmental Quality (VADEQ) is requesting that the City of Fredericksburg, Spotsylvania County, and Stafford County (the Fredericksburg area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the Commonwealth submitted a State Implementation Plan revision consisting of a maintenance plan for the Fredericksburg area that provides for continued attainment of the 8-hour ozone NAAQS for the next 10 years. EPA is proposing to make a determination that the Fredericksburg area has attained the 8-hour ozone NAAQS. This proposed determination is based on three years of complete, quality-assured ambient air quality monitoring data for 2002-2004 that demonstrate the 8-hour NAAQS has been attained in the area. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Fredericksburg area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the 8-hour maintenance plan for the Fredericksburg area for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the

redesignation request and of the maintenance plan revision to the Virginia SIP in accordance with the requirements of the CAA.

**DATES:** Written comments must be received on or before December 2, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-VA-0007 by one of the following methods:

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

Agency Web site: <http://docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).  
Mail: R03-OAR-2005-VA-0007, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R03-OAR-2005-VA-0007. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://docket.epa.gov/rmepub/>, 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 RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web sites are 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 RME or [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 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.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:**

Amy Caprio, (215) 814-2156, or by e-mail at [caprio.amy@epa.gov](mailto:caprio.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we", "us", or "our" is used, we mean EPA.

**Table of Contents**

- I. What Actions Is EPA Proposing to Take?
- II. What Is the Background for These Proposed Actions?
- III. What Are the Criteria for Redesignation to Attainment?
- IV. Why Is EPA Taking These Actions?
- V. What Would be the Effect of These Actions?
- VI. What Is EPA's Analysis of the Commonwealth's Request?
- VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Fredericksburg Area Adequate and Approvable?
- VIII. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia
- IX. Proposed Actions
- X. Statutory and Executive Order Reviews

**I. What Actions Is EPA Proposing to Take?**

On May 2, 2005, VADEQ formally submitted a request to redesignate the Fredericksburg area to attainment of the 8-hour NAAQS for ozone. On May 4, 2005, Virginia submitted a maintenance plan for the Fredericksburg area as a SIP revision, to ensure continued attainment over the next 10 years. The Fredericksburg area is composed of the City of Fredericksburg, Spotsylvania County, and Stafford County. It is currently designated as a moderate 8-

hour ozone nonattainment area. EPA is proposing to determine that the Fredericksburg area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Fredericksburg area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the area (such approval being one of the CAA requirements for approval of a redesignation request). The maintenance plan is designed to ensure continued attainment in the Fredericksburg area for the next 10 years. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) for the Fredericksburg area for transportation conformity purposes.

**II. What Is the Background for These Proposed Actions?**

*A. General*

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. The air pollutants NO<sub>x</sub> and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of 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. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001-2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Fredericksburg area was designated as moderate 8-hour ozone nonattainment status in a notice signed on April 25, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years of 2001-2003.

The CAA, title I, part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. 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 ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA’s 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, the Fredericksburg area was designated a moderate 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003, and is subject to the requirements of both subparts 1 and 2.

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 data completeness requirements. The data completeness requirements are 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 40 CFR part 50. In 2004, the ambient ozone data for the Fredericksburg area indicated no further violations of the 8-hour ozone standard, using data from the 3-year period of 2002–2004 with a design value of 0.084 ppm. Available preliminary monitoring data through September 30, 2005 indicates continued attainment of the 8-hour ozone standard.

#### B. The Fredericksburg Area

The Fredericksburg 8-hour ozone nonattainment area consists of the City of Fredericksburg, Spotsylvania County, and Stafford County. Prior to designation as an 8-hour ozone nonattainment area, the City of Fredericksburg and Spotsylvania County were designated attainment for the 1-hour ozone NAAQS, as part of the North Eastern Virginia Intrastate (Air Quality Control Region 224) area. Stafford County, on the other hand, was part of the Metropolitan Washington,

DC 1-hour ozone nonattainment area (the Washington area), and therefore was subject to requirements for both serious and severe 1-hour ozone nonattainment areas pursuant to sections 182(c) and 182(d) of the Clean Air Act.<sup>1</sup>

On May 2, 2005, the Commonwealth of Virginia requested redesignation to attainment for the 8-hour ozone standard for the Fredericksburg area. The redesignation request included three years of complete, quality-assured data for the period of 2002–2004, indicating that the 8-hour NAAQS for ozone had been achieved for the Fredericksburg area. The data satisfies the CAA requirements 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. Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

#### C. Prior Proposed Rulemaking Actions

On September 12, 2005 (70 FR 53746), EPA proposed approval of a redesignation request and maintenance plan submitted by the Commonwealth of Virginia for the Fredericksburg area. On September 30, 2005 (70 FR 57238), EPA withdrew the September 12, 2005 proposed rule and stated that EPA would re-propose approval of the redesignation of the Fredericksburg area and the associated maintenance plan, and provide an expanded discussion as to why the redesignation request for this area is approvable under the CAA. In this notice of proposed rulemaking, EPA is re-proposing approval of the redesignation of the Fredericksburg area and the associated maintenance plan as announced in the September 30, 2005 withdrawal notice.

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

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) EPA determines that the area has attained the applicable NAAQS;

<sup>1</sup> EPA reclassified the Washington area from serious nonattainment to severe nonattainment for the 1-hour ozone NAAQS on January 24, 2003. See 68 FR 3410 (January 24, 2003) for the reclassification and 56 FR 56694 (November 6, 1991) for the original classification.

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA 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) EPA 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.

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:

- “Ozone and Carbon Monoxide Design Value Calculations”, Memorandum from Bill Laxton, June 18, 1990;
- “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;
- “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- “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;
- “Technical Support Documents (TSD’s) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- “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;

- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” dated November 30, 1993;

- “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

- “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.

Relevant rulemakings also include EPA’s Final Rule to Implement the 8-Hour Ozone NAAQS—Phase 1 and the Notice of Reconsideration thereof. See 69 FR 23951 (April 30, 2004) and 70 FR 30592, 30604 (May 26, 2005).

**IV. Why Is EPA Taking These Actions?**

On May 2, 2005, the VADEQ requested redesignation of the Fredericksburg area to attainment for the 8-hour ozone standard. On May 4, 2005, the VADEQ submitted a maintenance plan for the Fredericksburg area as a SIP revision, to assure continued attainment over the next 10 years. EPA has determined that the Fredericksburg area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

**V. What Would Be the Effect of These Actions?**

Approval of the redesignation request would change the designation of the Fredericksburg area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Virginia SIP a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Fredericksburg area for the next 10 years. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the NO<sub>x</sub> and VOC MVEBs for transportation conformity purposes for the years 2004, 2009 and 2015. These MVEBs are displayed in the following table:

**TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)**

| Year       | NO <sub>x</sub> | VOC    |
|------------|-----------------|--------|
| 2004 ..... | 19.742          | 11.298 |
| 2009 ..... | 13.062          | 8.346  |
| 2015 ..... | 7.576           | 7.334  |

**VI. What Is EPA’s Analysis of the Commonwealth’s Request?**

EPA is proposing to determine that the Fredericksburg area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how the VADEQ’s May 2, 2005 and May 4, 2005 submittals satisfy the requirements of section 107(d)(3)(E) of the CAA.

*A. The Fredericksburg Area Has Attained the 8-Hour Ozone NAAQS*

EPA is proposing to determine that the Fredericksburg 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 the area over each year must not exceed the ozone standard of 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 Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Fredericksburg area, there is one ozone monitor, located in Stafford County, that measures air quality with respect to ozone. As part of its redesignation request, Virginia submitted ozone monitoring data for the years 2002–2004 (the most recent three years of data available as of the time of the redesignation request). This data has been quality assured and is recorded in AIRS. The fourth high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2.

**TABLE 2.—FREDERICKSBURG AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES STAFFORD COUNTY STATION NO. 44–1, AIRS ID 511790001**

| Year       | Annual 4th high reading (ppm) |
|------------|-------------------------------|
| 2002 ..... | 0.094                         |
| 2003 ..... | 0.085                         |
| 2004 ..... | 0.073                         |

The average for the 3-year period 2002 through 2004 is 0.084 ppm.

The data for 2002–2004 show that the area has attained the standard, and preliminary data for the 2005 ozone season show that the area continues to attain the standard. The data collected at the Stafford County monitor satisfies the CAA requirement that the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 parts per million (ppm). The VADEQ’s request for redesignation for the Fredericksburg area indicates that the data was quality assured in accordance with 40 CFR part 58. The VADEQ uses AIRS as the database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, Virginia has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Virginia indicates that the area has attained the 8-hour ozone NAAQS.

*B. The Fredericksburg Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) of the CAA*

EPA has determined that Virginia has met all SIP requirements for the Fredericksburg area applicable for purposes of redesignation under Section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title 1 of the CAA, in accordance with Section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the

CAA. We note that SIPs must be fully approved only with respect to applicable requirements. The September 4, 1992 Calcagni memorandum ("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) with respect to the timing of applicable requirements. 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, September 17, 1993, and 60 FR 12459, 12465-66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). 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. Section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

#### 1. Section 110 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. The general SIP elements and requirements set forth in section 110(a)(2) 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 requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (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 transport of air pollutants in accordance with the NO<sub>x</sub> SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO<sub>x</sub> SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25161). 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 classification 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 these 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 Commonwealth will still be subject to these requirements after the Fredericksburg 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 policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirements, as well as with the policy on the applicability of section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174-53176 (October 10, 1996), (62 FR 24816, May 7, 1997); Cleveland-Akron-Lorain, 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 redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001). Similarly, with respect to the NO<sub>x</sub> SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO<sub>x</sub> SIP Call rules are not "an 'applicable requirement' for purposes of

section 110(l) because the NO<sub>x</sub> rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS." 69 FR 23951, 23983 (April 30, 2004).

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, because, as explained below, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request. Therefore EPA concludes that Virginia has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

#### 2. Part D Nonattainment Area Requirements Under the 1-Hour Standard and EPA's Anti-Backsliding Rules

Stafford County is the only locality in the Fredericksburg area that was subject to ozone requirements for 1-hour ozone nonattainment areas. As noted previously, prior to its designation as an 8-hour ozone nonattainment area, Stafford County was a part of the Metropolitan Washington, DC 1-hour ozone nonattainment area, and therefore, subject to SIP requirements for serious and severe ozone nonattainment areas pursuant to sections 182 (c) and (d) of the CAA. While, on June 15, 2005, the 1-hour standard was revoked, 40 CFR 50.9(b), under EPA's anti-backsliding rules, areas designated nonattainment for the 1-hour standard at the time of the 8-hour ozone designations remained subject to certain control measures that applied by virtue of the area's classification for the 1-hour ozone NAAQS. (40 CFR 51.900 et seq., see also 70 FR 30592, 30604, May 26, 2005). The applicable Part D 1-hour ozone standard requirements for purposes of redesignation are those that continue to apply under EPA's anti-backsliding rules, which were promulgated in conjunction with the implementation of the 8-hour NAAQS. (40 CFR 51.900 et seq., as amended 70 FR 30592, 30604 (May 26, 2005)).

EPA's 8-hour NAAQS implementation rule in 40 CFR 51.905(a)(1) prescribes the 1-hour NAAQS requirements that continue to apply after revocation of the 1-hour NAAQS to former 1-hour ozone nonattainment areas, such as Stafford County. Section 51.905(a)(1)(i) provides that:

The area remains subject to the obligation to adopt and implement the applicable

requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) of this section. \* \* \*

Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that:

Applicable requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at designation for the 8-hour NAAQS:

- (1) Reasonably available control technology (RACT).
- (2) Inspection and maintenance programs (I/M).
- (3) Major source applicability cut-offs for purposes of RACT.
- (4) Rate of Progress (ROP) reductions.
- (5) Stage II vapor recovery.
- (6) Clean fuels fleet program under section 183(c)(4) of the CAA.
- (7) Clean fuels for boilers under section 182(e)(3) of the CAA.
- (8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.
- (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.
- (10) Transportation control measures (TCMs) under section 182(c)(5) of the CAA.
- (11) Vehicle miles traveled (VMT) provisions of section 182(d)(1) of the CAA.
- (12) NO<sub>x</sub> requirements under section 182(f) of the CAA.
- (13) Attainment demonstration or an alternative as provided under section 51.905(a)(1)(ii).

Pursuant to 40 CFR 51.905(c), only the Stafford County portion of the Fredericksburg area is subject to the obligations set forth in 51.905(a) and 51.900(f). At the time Stafford County was designated nonattainment for the 8-hour standard, it was part of a 1-hour nonattainment area classified as severe. Therefore, two of the elements—clean fuels for boilers under section 182(e)(3) and TCMs during heavy traffic hours as provided under section 182(e) are not applicable requirements for the Stafford County portion of the Fredericksburg area. The following paragraphs discuss how the applicable requirements have been met.

With respect to RACT and the major source applicability cut-offs for purposes of RACT, EPA has fully approved Virginia's SIP for the Washington 1-hour ozone nonattainment area as meeting the requirements of sections 182(b)(2), 182(c) and 182(f) of the CAA. On March 12, 1997 (62 FR 11332), EPA fully approved Virginia's VOC RACT regulation SIP revision for control technique guideline (CTG) sources and for non-CTG sources which have an applicability threshold of 25 tons per year (tpy) or more. On January 2, 2001

(66 FR 8), EPA fully approved Virginia's NO<sub>x</sub> RACT regulation SIP revision which had a major source applicability threshold of 50 tpy or more. On August 9, 2004 (69 FR 48150), EPA fully approved Virginia's SIP revision that lowered the major source applicability threshold for its NO<sub>x</sub> RACT (and Part D NSR) regulations to 25 tpy. EPA has fully approved Virginia's SIP revisions consisting of source category and individual source RACT determinations.<sup>2</sup> See 62 FR 11332 (March 12, 1997); 62 FR 11334 (March 12, 1997); 64 FR 3425 (January 22, 1999); 66 FR 8 (January 2, 2001); 69 FR 48150 (August 9, 2004); 69 FR 54578 (September 9, 2004); 69 FR 54600 (September 9, 2004); 69 FR 59812 (October 6, 2004); and, 69 FR 72115 (December 13, 2004).

On September 1, 1999 (64 FR 47670), EPA fully approved Virginia's I/M program to meet the enhanced program required in the Washington 1-hour ozone nonattainment area under section 182(c)(3) of the CAA.

EPA has fully approved Virginia's SIP revisions that demonstrate ROP reductions required in the Washington 1-hour ozone nonattainment area. On October 6, 2000 (65 FR 59727), EPA approved Virginia's plan to achieve the 15 percent reduction in VOC emissions in the Washington area that was required under section 182(b) of the CAA. On May 13, 2005 (70 FR 25688), EPA fully approved Virginia's ROP plan to achieve further ROP reductions in the Washington, area by 1999, 2002 and 2005 that were required of serious and severe 1-hour ozone nonattainment areas under section 182(c)(2) of the CAA.

On June 23, 1994 (59 FR 32353), EPA approved Virginia's Stage II vapor recovery program required in the Washington 1-hour ozone nonattainment area under section 182(b)(2) of the CAA.

On December 28, 1999 (64 FR 72564), EPA fully approved Virginia's SIP revision which substituted a national low emission vehicle (NLEV) program for the clean fuel fleet program required in the Washington 1-hour ozone nonattainment area under section 182(c)(4) of the CAA.

On September 11, 1995, (60 FR 47081), EPA fully approved Virginia's SIP revision consisting of an enhanced ambient monitoring program required in

the Washington 1-hour ozone nonattainment area under section 182(c)(1) of the CAA.

Within six years of November 15, 1990, and every three years thereafter, section 182(c)(5) requires States to submit a demonstration of whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters (collectively "relevant parameters") are consistent with those used for the area's demonstration of attainment for serious and above 1-hour ozone nonattainment areas. If the levels of relevant parameters that are projected in the attainment demonstration are exceeded, a State has 18 months to develop and submit a revision of the applicable implementation plan to include TCMs to reduce emissions to a level consistent with emissions levels in the attainment demonstration for the area.

Alternatively, EPA has determined that nonattainment areas are not permanently locked into the estimates of future emissions given in the initial SIP submittal, nor locked into those in any subsequently approved amendment thereto. As we stated in the General Preamble, once approved, the amended SIP revision would have the effect of increasing the allowable motor vehicle emissions (including those due to changes in the relevant parameters). See 57 FR 13498 at 13520 (April 16, 1992). Thus if actual emissions exceed those projected in an area's attainment demonstration, a State may at any time before the area reaches attainment, amend the area's SIP to demonstrate attainment while altering the mix of emissions reductions in its SIP from various kinds of sources (motor vehicle versus non-motor vehicle), rather than include TCMs in the SIP.

On August 19, 2003, Virginia submitted a SIP revision consisting of a demonstration that the Washington 1-hour ozone nonattainment area would attain the 1-hour ozone NAAQS by November 15, 2005. See 70 FR 25688 (May 13, 2005). This SIP revision contained information on the relevant parameters current as of June 2003. On February 25, 2004, Virginia submitted as a SIP revision a revised attainment demonstration and plan for the Washington 1-hour ozone nonattainment area which also showed that the Washington 1-hour ozone nonattainment area would attain the 1-hour ozone NAAQS by November 15, 2005. See 70 FR 25688 (May 13, 2005). That February 25, 2004 SIP revision contained information on the relevant parameters current as of November 23, 2003. On May 13, 2005 (70 FR 25688), EPA fully approved Virginia's February

<sup>2</sup>Certain sources located in Stafford County applied for and received Federally Enforceable State Operating Permits (FESOPs) from VADEQ which limited their emissions of VOC and NO<sub>x</sub> below the RACT applicability thresholds. After redesignation, those FESOPs will remain applicable requirements of the Virginia SIP.

25, 2004 attainment demonstration and plan SIP revision for the Washington 1-hour ozone nonattainment. In the February 25, 2004 SIP revision, the relevant parameters remained consistent with the demonstration of attainment by relying on a mix of emissions reductions from motor vehicle and non-motor vehicle emission reduction without need to resort to TCMs.

EPA therefore concludes that Virginia has complied with the substance of section 182(c)(5), has no currently due 182(c)(5) obligations, and by virtue of EPA's approval of the February 25, 2004 attainment demonstration and plan SIP revision, has never triggered an obligation under 182(c)(5) to include TCMs in its SIP for the Washington 1-hour ozone area. Additionally, in line with EPA's guidance and policy regarding what is an applicable Part D requirement under section 107 of the CAA that was discussed previously in this document, EPA believes that any future activities, which may be required under section 182(c)(5), e.g., the next or subsequent triennial demonstration of the relevant parameters, for the former Washington 1-hour ozone nonattainment area did not come due before Virginia submitted its redesignation request and therefore are not applicable Part D requirements with respect to the approval of Virginia's request to redesignate the Fredericksburg area to attainment of the 8-hour ozone NAAQS.

On May 13, 2005 (70 FR 25688), EPA fully approved Virginia's SIP revision for the Washington 1-hour ozone nonattainment area that implemented the VMT provisions of section 182(d)(1) of the CAA.

With respect to NO<sub>x</sub> requirements under section 182(f) of the CAA, as discussed above, EPA has fully approved Virginia's SIP revision implementing the NO<sub>x</sub> RACT requirements in the Washington 1-hour ozone nonattainment area. For the Stafford County portion of the Fredericksburg area, EPA has fully approved, pursuant to section 110(k), Virginia's Part D NSR program that meets the requirements for a severe ozone nonattainment area set under Part D of Title I of the CAA. The Virginia Part D NSR program covers major sources of NO<sub>x</sub> as well as VOC. See 64 FR 51047 (September 21, 1999); 65 FR 21315 (April 21, 2000); and, 69 FR 48150 (August 9, 2004).

On August 9, 2004 (69 FR 48150), EPA fully approved Virginia's SIP revision that lowered the major source applicability threshold for its NO<sub>x</sub> RACT (and Part D NSR) regulations to 25 tpy.

On May 13, 2005 (70 FR 25688), EPA fully approved Virginia's 1-hour ozone attainment demonstration SIP revision for the Washington 1-hour ozone nonattainment area.

In its May 2, 2005 redesignation request, Virginia identified certain SIP revisions as pending before EPA. As explained previously, EPA has since approved all those SIP revisions which are applicable Part D requirements. The remainder of these SIP revisions are not needed to fulfill an applicable Part D requirement for the Fredericksburg area. These other non-Part D SIP revisions propose to amend the Virginia SIP. EPA will approve these SIP revisions only if they meet the applicable requirements of the CAA and EPA's regulations, including but not limited to EPA's rules for the transition from the 1-hour to the 8-hour NAAQS under 40 CFR part 51, subpart X.

Thus EPA believes that Virginia has met all applicable Part D requirements under the 1-hour standard for purposes of redesignation under the 8-hour standard.

### 3. Part D Nonattainment Area Requirements Under the 8-Hour Standard

The Fredericksburg area was designated a moderate nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for 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. For a moderate nonattainment area for the 8-hour ozone standard, such as the Fredericksburg area, section 182(b) sets forth requirements. Section 184 also sets forth additional requirements for Stafford County, due to its location within the Ozone Transport Region (OTR). With respect to the 8-hour standard, EPA proposes to determine that the Virginia SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the area's redesignation request.

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the conformity, NSR, and OTR requirements as not requiring approval prior to redesignation.

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 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 v. EPA*, 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995, Tampa FL).

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 Part D NSR 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 NSR Requirements or Areas Requesting Redesignation to Attainment." Virginia has demonstrated that the area will be able to maintain the standard without Part D NSR in effect in the City of Fredericksburg and Spotsylvania County, and therefore, Virginia need not have a fully approved Part D NSR program prior to approval of the redesignation request. Virginia's PSD program will become effective in the area upon redesignation to attainment in the City of Fredericksburg and Spotsylvania County. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

As to Stafford County, which is located in the OTR, nonattainment NSR requirements will continue to be applicable. EPA has also interpreted the section 184 OTR requirements,

including NSR, as not being applicable for purposes of redesignation. The rationale for this is based on two factors. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore the Commonwealth remains obligated to have NSR, as well as RACT, and Vehicle I/M programs in Stafford County even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of its designation and classification. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997).

In any event, as discussed previously, EPA has fully approved Virginia's RACT, I/M and Part D nonattainment NSR SIP revisions for the Stafford County, the only part of the Fredericksburg area inside the OTR. Also, as noted previously, Virginia's approved RACT SIP sets the major source applicability thresholds for both VOC and NO<sub>x</sub> at 25 tpy which are well below the 50 and 100 tpy applicability thresholds required in the OTR for VOC sources and NO<sub>x</sub> sources, respectively.

EPA also notes that for the Stafford County portion of the Fredericksburg area EPA has fully approved under section 110(k) Virginia's nonattainment

NSR program that met the requirements for a severe 1-hour ozone nonattainment area. See 65 FR 21315 (April 21, 2000) as amended by 64 FR 51047 (September 21, 1999) (recodification) and by 69 FR 32928, June 14, 2004. Consequently Stafford County's approved NSR program satisfies the NSR requirements applicable in the OTR. Thus, EPA proposes to find that the Fredericksburg area has satisfied all 8-hour ozone standard requirements applicable for purposes of section 107(d)(3)(E) under Part D of the CAA.

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

EPA has fully approved the applicable Virginia SIP for the area under section 110(k) of the Clean Air Act. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25425 (May 12, 2003) and citations therein. Virginia has adopted and submitted and EPA has fully approved at various times provisions addressing the various 1-hour ozone standard SIP elements applicable for purposes of redesignation, in the Stafford portion of

the Fredericksburg area. 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 no 8-hour Part D requirements applicable for purposes of redesignation have yet become due, and therefore they need not be approved into the SIP prior to redesignation.

*C. The Air Quality Improvement in the Fredericksburg 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 the Commonwealth has demonstrated that the observed air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA approved Virginia's SIP control strategy for the Fredericksburg area, including enforceable rules and the emissions reductions achieved as a result of those rules. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO<sub>x</sub> EMISSIONS FOR 2002 AND 2004 (TPD)

| Year                                    | Point | Area*  | Nonroad | Mobile | Total  |
|---|-------|--------|---------|--------|--------|
| <b>Volatile Organic Compounds (VOC)</b> |       |        |         |        |        |
| Year 2002 .....                         | 0.563 | 13.487 | 3.545   | 13.054 | 30.649 |
| Year 2004 .....                         | 0.602 | 14.070 | 3.304   | 11.298 | 29.274 |
| Diff. (02–04) .....                     | 0.039 | 0.583  | –0.241  | –1.756 | –1.375 |
| <b>Nitrogen Oxides (NO<sub>x</sub>)</b> |       |        |         |        |        |
| Year 2002 .....                         | 0.178 | 3.258  | 3.717   | 22.498 | 29.651 |
| Year 2004 .....                         | 0.179 | 3.465  | 3.601   | 19.742 | 26.987 |
| Diff. (02–04) .....                     | 0.001 | 0.207  | –0.116  | –2.756 | –2.664 |

\* Area source category includes emissions from motor vehicle refueling.

Between 2002 and 2004, VOC emissions were reduced by 1.4 tpd, and NO<sub>x</sub> emissions were reduced by 2.7 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in the Fredericksburg area:

Programs Currently in Effect

- (a) National Low Emission Vehicle (NLEV);
- (b) Open burning restrictions for Stafford County only;
- (c) CTG RACT requirements for Stafford County only;

- (d) Non-CTG RACT requirements for Stafford County only;
- (e) Stage I and Stage II vapor recovery requirements for Stafford County only;
- (f) Reformulated gasoline (RFG) requirements for Stafford County only;
- (g) Area source VOC regulations concerning portable fuel containers; mobile vehicle refinishing; architectural and industrial maintenance coatings; solvent cleaning; and, consumer products for Stafford County only;
- (h) Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and,

- (i) Low-sulfur gasoline.
- Virginia has demonstrated that the implementation of permanent enforceable emissions controls have reduced local VOC and NO<sub>x</sub> emissions. Nearly all of these reductions are attributable to mobile source emission controls such as NLEV and Tier I programs. Additionally, Virginia has indicated in its submittal that the NO<sub>x</sub> SIP Call took effect in 2004. While there are no subject sources currently located in the City of Fredericksburg, Stafford County or Spotsylvania County, Virginia expects to indirectly benefit in terms of

improved air quality due to this program. EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving attainment of the 8-hour ozone standard.

*D. The Fredericksburg Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA*

In conjunction with its request to redesignate the Fredericksburg area to attainment status, Virginia submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the area for at least 10 years after redesignation.

1. 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 approval of a redesignation of an area to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan demonstrating 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 dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

- (a) An attainment emissions inventory;
- (b) A maintenance demonstration;
- (c) A monitoring network;
- (d) Verification of continued attainment; and
- (e) A contingency plan.

2. Analysis of the Fredericksburg Area Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. The VADEQ determined that the appropriate attainment inventory year is 2004. That year establishes a reasonable year

within the 3-year block of 2002–2004 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date.

The VADEQ prepared comprehensive VOC and NO<sub>x</sub> emissions inventories for the City of Fredericksburg, Spotsylvania County, and Stafford County, including point (sources with emissions over 10 tons per year or greater), area, mobile on-road, and mobile non-road sources for a base year of 2002. All inventories are based on actual emissions for a “typical summer day” and consist of a list of sources and their associated emissions. An attainment year of 2004 was used for the Fredericksburg area since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the CAA requirements to date. Because an actual emissions inventory for point sources has not yet been completed for 2004, the actual 2002 emissions inventory was used as a starting point and then projected to 2004 using Economic Growth Analysis System (EGAS 5.0).

To develop the NO<sub>x</sub> and VOC base year emissions inventories, VADEQ used the following approaches and sources of data:

(i) *Point source emissions* are recorded and maintained electronically in the VADEQ’s Comprehensive Environmental Data System (CEDS). The emissions for these sources are updated annually by collecting year-specific emissions and/or activity level information. While developing the emissions inventory, a cutoff emissions level of 10 tpy of ozone precursor pollutants was used to determine whether a source was included in these inventories. Smaller emissions sources were assumed to be included in the area source emissions inventories.

(ii) *Area source emissions* were developed using the 2002 periodic year stationary area source emissions inventories along with growth factors. Before attempting to calculate the growth factors, VADEQ determined the appropriate annual growth rate representative of each industry or indicator. “Growth Rate” refers to the annual percentage of growth that occurs in a category per year. The area source growth rate estimates also involve the use of current local source data, including area populations and employment data by source type.

(iii) The process of estimating *on-road mobile source emissions* consists of two components: Vehicular-related activity (*i.e.*, VMT) and an average rate of pollutant produced as a result of a particular level of activity. A pollutant emission rate associated with a

particular level of activity emissions were estimated using MOBILE6.2 emissions factors. The VADEQ has provided detailed data summaries to document the calculations of mobile on-road VOC and NO<sub>x</sub> emissions for 2002, as well as for the projection years of 2004, 2009, and 2015 (shown in tables 4 and 5 below).

(iv) *Mobile non-road emissions* were calculated using the NONROAD model that incorporates EPA’s recent regulations affecting these engine types (recreational vehicles, lawn and garden equipment, and outdoor power equipment) well into the future. The VADEQ used the NONROAD model to calculate emissions for all nonroad engine types except for aircraft, locomotives, and commercial marine vessels which were inventoried separately. The VADEQ’s nonroad inputs are based on the required RFG and the Stage II vapor recovery systems in Stafford County, while the City of Fredericksburg and Spotsylvania County’s non-road inputs are based on southern-grade conventional gasoline.

The 2004 attainment year VOC and NO<sub>x</sub> emissions for the Fredericksburg area are summarized along with the 2009 and 2015 projected emissions for this area in Tables 4 and 5 below, which covers the demonstration of maintenance for this area. EPA has concluded that the Commonwealth has adequately derived and documented the 2004 attainment year VOC and NO<sub>x</sub> emissions for this area.

(b) Maintenance Demonstration—On May 4, 2005, the VADEQ submitted a SIP revision to supplement its May 2, 2005 redesignation request. The submittal by VADEQ consists of the maintenance plan as required by section 175A of the CAA. This plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO<sub>x</sub> remain at or below the attainment year 2004 emissions levels throughout the Fredericksburg area through the year 2015. A maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–32 (May 12, 2003).

Tables 4 and 5 specify the VOC and NO<sub>x</sub> emissions for the Fredericksburg area for 2004, 2009, and 2015. The VADEQ chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO<sub>x</sub> emissions are not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2015 (TPD)

| Source category        | 2004 VOC emissions | 2009 VOC emissions | 2015 VOC emissions |
|------------------------|--------------------|--------------------|--------------------|
| Mobile <sup>1</sup>    | 11.298             | 8.346              | 7.334              |
| Nonroad                | 3.304              | 2.555              | 2.231              |
| Area <sup>2</sup> .... | 14.070             | 13.161             | 15.303             |
| Point .....            | 0.602              | 0.692              | 0.782              |
| Total ..               | 29.274             | 24.754             | 25.650             |

<sup>1</sup> Includes transportation conformity provisions.

<sup>2</sup> Includes vehicle refueling emissions and the benefits of selected local controls (Stage I, CTG RACT, and open burning).

TABLE 5.—TOTAL NO<sub>x</sub> EMISSIONS 2004–2015 (TPD)

| Source category        | 2004 NO <sub>x</sub> emissions | 2009 NO <sub>x</sub> emissions | 2015 NO <sub>x</sub> emissions |
|------------------------|--------------------------------|--------------------------------|--------------------------------|
| Mobile <sup>1</sup>    | 19.742                         | 12.062                         | 7.576                          |
| Nonroad                | 3.601                          | 3.080                          | 2.195                          |
| Area <sup>2</sup> .... | 3.465                          | 3.926                          | 4.742                          |
| Point .....            | 0.179                          | 0.180                          | 0.182                          |
| Total ..               | 26.987                         | 20.248                         | 14.695                         |

<sup>1</sup> Includes transportation conformity provisions.

<sup>2</sup> Includes selected local controls (open burning).

Additionally, the following mobile programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

- Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006); (January 18, 2001, 66 FR 5002); and
- Non-road emissions standards (2008) and off-road diesel fuel (2007/2010); (June 29, 2004, 69 FR 39858).

Lastly, to further improve air quality and to ensure continued attainment by maintaining emissions in the area at or below 2004 levels, the Commonwealth of Virginia has initiated rulemaking to implement the following programs:

- Stage I Vapor Recovery requirements in Fredericksburg and Spotsylvania;
- Open burning restriction requirements in Fredericksburg and Spotsylvania; and
- VOC RACT requirements for CTG—subject sources in Fredericksburg and Spotsylvania.

In addition to the above permanent and enforceable measures, CAIR should have positive impacts on the Commonwealth's air quality by the years 2009 and 2015.

Based on the comparison of the projected emissions and the attainment year emissions along with the additional

measures, EPA concludes that VADEQ has successfully demonstrated that the 8-hour ozone standard should be maintained in the Fredericksburg area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Fredericksburg area. VADEQ will continue to operate its current air quality monitor in accordance with 40 CFR part 58. Should measured mobile source parameters change significantly over time, the Commonwealth will perform a saturation monitoring study to determine the need for, and location of, additional permanent monitors.

(d) Verification of Continued Attainment—The Commonwealth of Virginia has the legal authority to implement and enforce specified measures necessary to attain and maintain the NAAQS. Key regulatory requirements that VADEQ will implement and retain to maintain attainment include expanding VOC RACT for CTG sources, Stage I Vapor Recovery, and open burning restrictions to the City of Fredericksburg and Spotsylvania County. The VADEQ will track the progress of the maintenance demonstration by periodically updating the emissions inventory. This tracking will consist of annual and periodic evaluations. The annual evaluation will consist of checks on key emissions trend indicators such as the annual emissions update of stationary sources, the Highway Performance Monitoring System (HPMS) VMT data reported to the Federal Highway Administration, and other growth indicators. These indicators will be compared to the growth assumptions used in the plan to determine if the predicted versus the observed growth remains relatively constant. The Commonwealth will also develop and submit comprehensive tracking inventories to EPA every three years during the maintenance plan period. For purpose of performing this tracking function for point sources, the Commonwealth will retain the annual emission statement requirements for the maintenance area (9 VAC 5–20–160).

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the Commonwealth will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would "trigger" the adoption and implementation of a contingency measure(s), the contingency measures

that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Fredericksburg area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO<sub>x</sub> emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO<sub>x</sub> emissions to decrease and stay below 2004 levels through the year 2015. However, if emissions do not decrease as expected, or if emissions increase, the area may experience 8-hour ozone violations.

The Commonwealth's maintenance plan lays out three situations where the need to adopt and implement a contingency measure to further reduce emissions would be triggered. Those situations are as follows:

(i) *An actual increase of the VOC or NO<sub>x</sub> emissions above the 2004 attainment levels is identified or predicted through the development of the comprehensive periodic tracking inventories*—The maintenance plan states that the VADEQ will monitor the observed growth rates for VMT, population, and point source VOC and NO<sub>x</sub> emissions on a yearly basis which will serve as an early warning indicator of the potential for a violation. The plan also states that comprehensive tracking inventories will also be developed every 3 years using current EPA-approved methods to estimate emissions, concentrating on areas identified in the less rigorous yearly evaluations as being potential problems. If the 2004 attainment level emissions for VOC or NO<sub>x</sub> is exceeded or is predicted to be exceeded, the following measures will be implemented:

- Preparation of a complete VOC and NO<sub>x</sub> emission inventory; and
- The expanded implementation of one or more of the following of Virginia's area source VOC regulations throughout the entire Fredericksburg area (these regulations are already required in Stafford County): Emission Standards for Portable Fuel Container Spillage (9 VAC 5 Chapter 40, Article 42); Emission Standards for Mobile Equipment Repair and Refinishing Operations (9 VAC 5 Chapter 40, Article 48); Emission Standards for Architectural and Industrial Maintenance Coatings (9 VAC 5 Chapter 40, Article 49); and Emission Standards for Consumer Products (9 VAC 5 Chapter 40, Article 50).

(ii) *The Stafford County monitor indicates two or more ozone exceedances (any fourth highest 8-hour*

average above 0.08 ppm) in consecutive years—According to the maintenance plan, if two or more ozone exceedances (any fourth highest 8-hour average above 0.08 ppm) are recorded in consecutive years, the following measure(s) will be implemented:

- The expanded implementation of one or more of the following of Virginia's area source VOC regulations throughout the entire Fredericksburg area (these regulations are already required in Stafford County): Emission Standards for Portable Fuel Container Spillage (9 VAC 5 Chapter 40, Article 42); Emission Standards for Mobile Equipment Repair and Refinishing Operations (9 VAC 5 Chapter 40, Article 48); Emission Standards for Architectural and Industrial Maintenance Coatings (9 VAC 5 Chapter 40, Article 49); and Emission Standards for Consumer Products (9 VAC 5 Chapter 40, Article 50).

(iii) *A violation (any 3 year average of each annual fourth highest 8-hour average) of the 8-hour ozone NAAQS of 0.08 ppm occurs*—The maintenance plan states that if a violation (any 3 year average of each annual fourth highest 8-hour average) of the 8-hour ozone NAAQS of 0.08 ppm occurs, the contingency measures will be implemented as follows:

- If there remain any VOC regulations [Emissions Standards for Portable Fuel Container Spillage (9 VAC 5 Chapter 40, Article 42); Emissions Standards for Mobile Equipment Repair and Refinishing Operations (9 VAC 5 Chapter 40, Article 48); Emission Standards for Architectural and Industrial Maintenance Coatings (9 VAC 5 Chapter 40, Article 49); and Emission Standards for Consumer Products (9 VAC 5 Chapter 40, Article 50)] not yet implemented following an earlier maintenance plan trigger event, expand the implementation of those remaining measures throughout the entire Fredericksburg area (these regulations are already required in Stafford County);

- If a violation of the ozone standard occurs in an ozone season subsequent to implementation of all of the Commonwealth's VOC area source regulations, then implement NO<sub>x</sub> RACT and VOC RACT for non-CTG sources emitting above 100 tpy located in Spotsylvania County and the City of Fredericksburg. Source categories that may be affected by this requirement include equipment manufacturing (NO<sub>x</sub> RACT and VOC RACT for non-CTG RACT has already been implemented in Stafford County, due to prior 1-hour ozone NAAQS requirements).

The following schedule for adoption, implementation and compliance applies

to the contingency measures concerning non-CTG RACT requirements. It would also apply to the imposition of the area source VOC regulations if those regulations had not already been implemented due to other triggers or provisions of the maintenance plan.

- Notification received from EPA that a contingency measure must be implemented, or three months after a recorded violation;

- Applicable regulation to be adopted 6 months after this date;

- Applicable regulation to be implemented 6 months after adoption<sup>3</sup>;

- Compliance with regulation to be achieved within 12 months of adoption.

(f) *An Additional Provision of the Maintenance Plan*—The Commonwealth's maintenance plan for the Fredericksburg area has an additional provision. That provision states that regardless of the number of exceedances or violations noted, the regulations controlling VOC emissions from area sources: Article 42 Emission Standards for Portable Fuel Container Spillage (9 VAC 5 Chapter 40, Article 48); Emission Standards for Mobile Equipment Repair and Refinishing Operations (9 VAC 5 Chapter 40, Article 49); Emission Standards for Architectural and Industrial Maintenance Coatings (9 VAC 5 Chapter 40, Article 50); and Emission Standards for Consumer Products (9 VAC 5 Chapter 40) will be expanded to the City of Fredericksburg and Spotsylvania County such that these regulations will take effect in 2008, or as expeditiously as possible thereafter in order to provide additional air quality benefits.

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. EPA believes that the maintenance plan SIP revision submitted by Virginia for the Fredericksburg area meets the requirements of section 175A of the Act.

<sup>3</sup> In the event of implementation of the RACT contingency measure, Virginia would amend its current RACT regulations to apply them to non-CTG sources in Spotsylvania County and the City of Fredericksburg within 6 months after (a) notification received from EPA that the contingency measure must be implemented, or (b) three months after a recorded violation. The newly subject non-CTG RACT sources would need to develop source-specific RACT plans and comply with their plans no later than 12 months from the date of Virginia's adoption of the amended regulations.

## VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Fredericksburg Area Adequate and Approvable?

### A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e. Reasonable Further Progress SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan the MVEBs are termed "on-road mobile source emissions budgets". Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. An MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. An 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 and revise the MVEBs in control strategy SIPs and maintenance plans.

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 or reasonable progress towards the national ambient air quality standards. 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 state implementation plan.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein "adequate" for use in determining transportation conformity. After 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 state implementation plan as required by section 176(c) of the CAA. EPA’s substantive criteria for determining “adequacy” of an MVEB are set out in 40 CFR 93.118(e)(4).

EPA’s 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 PM2.5 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.

The MVEBs for the Fredericksburg area are listed in Table 1 of this document for the 2004, 2009, and 2015 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

*B. What Is a Safety Margin?*

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. The following example is for the 2015 safety margin: The Fredericksburg area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as the

year to determine attainment levels of emissions for the Fredericksburg area. The total emissions from point, area, non road and mobile sources in 2004 equaled 29.274 tpd of VOC and 26.987 tpd of NO<sub>x</sub>. The VADEQ projected emissions out to the year 2015 and projected a total of 25.650 tpd of VOC and 14.695 tpd of NO<sub>x</sub> from all sources in the Fredericksburg area. The safety margin for the Fredericksburg area for 2015 would be the difference between these amounts, or 3.624 tpd of VOC and 12.292 tpd of NO<sub>x</sub>. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area’s air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. The following table shows the safety margins for the 2009 and 2015 years.

TABLE 6.—2009 AND 2015 SAFETY MARGINS FOR THE FREDERICKSBURG AREA

| Inventory year           | VOC emissions (tpd) | NO <sub>x</sub> emissions (tpd) |
|--------------------------|---------------------|---------------------------------|
| 2004 Attainment .....    | 29.274              | 26.987                          |
| 2009 Interim .....       | 24.754              | 20.248                          |
| 2009 Safety Margin ..... | 4.520               | 6.739                           |
| 2004 Attainment .....    | 29.274              | 26.987                          |
| 2015 Final .....         | 25.650              | 14.695                          |
| 2015 Safety Margin ..... | 3.624               | 12.292                          |

The VADEQ allocated 0.25 tpd of the safety margin to both the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO<sub>x</sub> projected on-road mobile

source emissions projection to arrive at the 2009 MVEBs. For the 2015 MVEBs the VADEQ allocated 0.25 tpd NO<sub>x</sub> and 1.6 tpd VOC from the 2015 safety margins to arrive at the 2015 MVEBs.

Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category.

TABLE 7.—2009 AND 2015 FINAL MVEBs FOR THE FREDERICKSBURG AREA

| Inventory year   | VOC emissions (tpd) | NO <sub>x</sub> emissions (tpd) |
|--|---------------------|---------------------------------|
| 2009 projected on-road mobile source projected emissions ..... | 8.096               | 12.812                          |
| 2009 Safety Margin Allocated to MVEBs .....                    | 0.250               | 0.250                           |
| 2009 MVEBs .....   | 8.346               | 13.062                          |
| 2015 projected on-road mobile source projected emissions ..... | 5.734               | 7.326                           |
| 2015 Safety Margin Allocated to MVEBs .....                    | 1.600               | 0.250                           |
| 2015 MVEBs .....   | 7.334               | 7.576                           |

*C. Why Are the MVEBs Approvable?*

The 2004, 2009 and 2015 MVEBs for the Fredericksburg area are approvable because the motor vehicle emissions budgets for NO<sub>x</sub> and VOC including the allocated safety margins continue to maintain the total emissions at or below the attainment year inventory levels as

required by the transportation conformity regulations.

*D. What Is the Adequacy and Approval Process for the MVEBs in the Fredericksburg Area Maintenance Plan?*

The MVEBs for the Fredericksburg maintenance plan are being posted to EPA’s conformity Web site concurrent

with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate

and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budget adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Fredericksburg MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Fredericksburg MVEBs will also be announced on EPA's conformity Web site: <http://www.epa.gov/oms/traq>, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

#### **VIII. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal

opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. \* \* \*" The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

#### **IX. Proposed Actions**

EPA is proposing to determine that the Fredericksburg area has attained the 8-hour ozone NAAQS. The EPA is also proposing to approve the

Commonwealth of Virginia's May 2, 2005 request for the Fredericksburg area to attainment of the 8-hour NAAQS for ozone because the requirements for approval have been satisfied. EPA has evaluated Virginia's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Fredericksburg area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for this area, submitted on May 4, 2005, as a revision to the Virginia SIP. EPA is proposing to approve the maintenance plan for the area because it meets the requirements of section 175A. EPA is also proposing to approve the MVEBs submitted by Virginia for the area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### **X. 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 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 Clean Air Act 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 (Pub. L. 104-4). This proposed rule also does 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), nor will it 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), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act. Redesignation is an action that affects the status of a geographical area and 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule proposing to approve the redesignation of the Fredericksburg area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, 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, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

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

Dated: October 27, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 05-21835 Filed 11-1-05; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 05-2693; MB Docket No. 05-282; RM-11229]

### Radio Broadcasting Services; Aragon, GA; Chattanooga and Lynchburg, TN; and Rockmart, GA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth a proposal to amend the FM Table of Allotments, section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Audio Division requests comment on a petition filed by Woman's World Broadcasting, Inc., pursuant to section 1.420(i) of the Commission's rules, 47 CFR 1.420(i). Petitioner proposes to change the community of license for Station WTSH-FM from Rockmart to Aragon, Georgia, to upgrade the authorization for Station WTSH-FM to Class C1, and to change the FM Table of Allotments by deleting Channel 296C2 at Rockmart, Georgia, and by adding Channel 296C1 at Aragon, Georgia, as the community's first local aural broadcast service. The proposed coordinates for Channel 296C1 at Aragon, Georgia, are 34-22-02 NL and 84-58-33 WL. The allotment will require a site restriction of 36.4 km (22.6 miles) north of Aragon. In order to

accommodate the allotment of Channel 296C1 at Aragon, the petitioner further requests the substitution of Channel 230A for Channel 293A at Lynchburg, Tennessee. The proposed reference coordinates for Channel 230A at Lynchburg, Tennessee, are 35-21-58 NL and 86-17-18 WL, with a site restriction of 12.1 km (7.5 miles) northeast of Lynchburg.

**DATES:** Comments must be filed on or before December 5, 2005, and reply comments on or before December 20, 2005.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, NW., Suite 301, Washington, DC 20016.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05-282, adopted October 12, 2005, and released October 14, 2005. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpweb.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.