

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Diamond Aircraft Industries GmbH: Docket No. FAA–2007–27708; Directorate Identifier 2007–CE–027–AD.

Comments Due Date

(a) We must receive comments by May 14, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model DA 42 airplanes; serial numbers 42.015, 42.028, 42.036, 42.044, 42.055, 42.059, 42.062, 42.067, 42.069, 42.075 through 42.100, 42.105, 42.106, 42.108, 42.114, 42.115, 42.117 through 42.122, and 42.124; certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states: From airplanes that have installed the Auxiliary Fuel Tank Optional Design Change (OÄM) No. 42–056, three in-service failures of the auxiliary fuel tank venting system have been reported. These failures have led to the inability to supply the complete auxiliary fuel quantity to the main tanks and the collapse of the auxiliary tank. It is suspected that the vent lines were obstructed either by ice accretion under certain climatic conditions or by blockage of the vent valves because of fuel contaminants.

Undetected malfunctions of the venting system and damaged auxiliary fuel tanks may lead to a lower usable fuel quantity, subsequent fuel starvation and/or fuel spillage into the nacelle.

Actions and Compliance

(f) Unless already done, do the following actions within the next 30 days after the effective date of this AD:

(1) Inspect and modify the auxiliary fuel tank system following Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB–42–032/1, dated January 24, 2007.

(2) Incorporate Doc. No. 7.02.01, Section 05–20–00, page 68a of Diamond Aircraft DA 42 AMM Temporary Revision AMM–TR–OÄM–42–056f, dated January 23, 2007, into the Airworthiness Limitations documents of the FAA-approved maintenance program (e.g., maintenance manual). The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information specified in paragraph (f)(2) of this AD into the maintenance program (e.g., maintenance manual). Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

Note 1: Doc. No. 7.02.01, Section 05–20–00, page 68a of Diamond Aircraft DA 42

AMM Temporary Revision AMM–TR–OÄM–42–056f, dated January 23, 2007, specifies additional repetitive inspections for the auxiliary tank vent system.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2007–0047, dated February 23, 2007; Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB–42–032/1, dated January 24, 2007; and Diamond Aircraft DA 42 AMM Temporary Revision AMM–TR–OÄM–42–056f, dated January 23, 2007 for related information.

Issued in Kansas City, Missouri, on April 6, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–7049 Filed 4–12–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81**

[EPA–R03–OAR–2006–0919; FRL–8298–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the Hampton Roads 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. The Virginia Department of Environmental Quality (VADEQ) is requesting that the Hampton Roads ozone nonattainment area (“Hampton Roads Area” or “Area”) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). The Area is comprised of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, and the Counties of Gloucester, Isle of Wight, James City, and York, Virginia. EPA is proposing to approve the ozone redesignation request for the Hampton Roads Area. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the Hampton Roads Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Hampton Roads Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality monitoring data for 2003–2005. EPA’s proposed approval of the 8-hour ozone redesignation request is based on its determination that the Hampton Roads Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, the Commonwealth of Virginia has also submitted a 2002 base-year inventory for the Hampton Roads Area, and EPA is proposing to approve that inventory for the Hampton Roads Area as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for the Hampton Roads 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 and 2002 base-year inventory SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before May 14, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0919 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: morris.makeba@epa.gov

C. Mail: EPA-R03-OAR-2006-0919, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. 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 Docket ID No. EPA-R03-OAR-2006-0919. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the

www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy 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.

SUPPLEMENTARY INFORMATION:

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

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I. What Are the Actions EPA Is Proposing to Take?

On October 16, 2006 the VADEQ formally submitted a request to redesignate the Hampton Roads Area from nonattainment to attainment of the 8-hour NAAQS for ozone. On October 18, 2006 Virginia submitted a maintenance plan for the Hampton Roads Area as a SIP revision to ensure continued attainment in the Area over the next 11 years. VADEQ also submitted a 2002 base-year inventory for the Hampton Roads Area as a SIP revision on October 12, 2006 and supplements to the base-year inventory were submitted on November 20, 2006 and February 13, 2007. The Hampton Roads Area is comprised of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, and the Counties of Gloucester, Isle of

Wight, James City, and York, Virginia. It is currently designated a marginal 8-hour ozone nonattainment area. EPA is proposing to determine that the Hampton Roads 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 Hampton Roads Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Hampton Roads maintenance plan as a SIP revision for the Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to ensure continued attainment in the Hampton Roads Area for the next 11 years. Concurrently, the Commonwealth is requesting that this 8-hour maintenance plan supersede the previous 1-hour maintenance plan. EPA is also proposing to approve the 2002 base-year inventory for the Hampton Roads Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Hampton Roads maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOCs) and nitrogen oxides (NO_x) for the Hampton Roads 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_x and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_x 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 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 Hampton Roads Area was designated a marginal 8-hour ozone nonattainment area in a **Federal Register** notice signed on April 15, 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 2001–2003. On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Hampton Roads Area (as well as most other areas of the country) effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); and see 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006) (hereafter "South Coast."). The Court held that certain provisions of EPA's Phase I Rule were inconsistent with the requirements of the Clean Air Act. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under Subpart 1 in lieu of subpart 2 of Title I, part D of the Act. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) the certain conformity requirements for certain types of federal. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. Elsewhere in this document, mainly in section VI. B. "The Hampton Roads Area Has Met All Applicable Requirements under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA," EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating the Hampton Roads Area to attainment of the 8-hour ozone NAAQS.

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. In 2004, the

Hampton Roads Area was classified a marginal 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003. Therefore, the Hampton Roads Area is subject to the requirements of subpart 2 of part D.

Under 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. The ozone monitoring data indicates that the Hampton Roads Area has a design value of 0.078 ppm for the 3-year period of 2003–2005, using complete, quality-assured data. Therefore, the ambient ozone data for the Hampton Roads Area indicates no violations of the 8-hour ozone standard.

B. The Hampton Roads Area

Under the 1-hour ozone NAAQS, the Hampton Roads Area consists of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, and the Counties of James City, and York, Virginia. Under the 8-hour ozone NAAQS, the Hampton Roads Area was expanded to also include Gloucester County and Isle of Wight County. Prior to the Area's designation as an 8-hour ozone nonattainment area, the Hampton Roads Area was a maintenance area for the 1-hour ozone NAAQS.¹ See June 26, 1997 (62 FR 34408).

On October 16, 2006 the VADEQ requested that the Hampton Roads Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Hampton Roads Area. The data satisfies the CAA requirements that the 3-year average of the annual fourth-highest daily maximum 8-hour

¹ Under the 1-hour ozone NAAQS the Hampton Roads Area consisted of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, and the Counties of James City and York. See November 6, 1991 (58 FR 56694).

average ozone concentration (commonly referred to as the area's design value), must be less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). 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).

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;

(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 redesignations 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 (TSDs) 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.

IV. Why Is EPA Taking These Actions?

On October 16, 2006, the VADEQ requested redesignation of the Hampton Roads Area to attainment for the 8-hour ozone standard. On October 18, 2006, VADEQ submitted a maintenance plan for the Hampton Roads Area as a SIP revision, to ensure continued attainment of the 8-hour ozone NAAQS over the next 11 years, until 2018. Concurrently, Virginia is requesting that 8-hour maintenance plan submittal supersede the 1-hour maintenance plan requirements already in place and that the 8-hour maintenance plan meet the requirement of CAA section 175A(b) with respect to the 1-hour ozone

maintenance plan update. EPA is proposing to approve the maintenance plan to fulfill the requirement of section 175A(b) for submission of a maintenance plan update eight years after the area was redesignated to attainment of the 1-hour ozone NAAQS. EPA believes that such an update must ensure that the maintenance plan in the SIP provides maintenance of the NAAQS for a period of 20 years after the area is initially redesignated to attainment. EPA can propose approval because the maintenance plan, which demonstrates maintenance of the 8-hour ozone NAAQS through 2018, also demonstrates maintenance of the 1-hour ozone NAAQS through 2018.

VADEQ also submitted a 2002 base-year inventory with its maintenance plan as a SIP revision on October 12, 2006 and supplemental to that submittal on November 20, 2006 and February 13, 2007, which is an applicable requirement for the Hampton Roads Area for purposes of redesignation. EPA has determined that the Hampton Roads Area has attained the 8-hour ozone 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 official designation of the Hampton Roads 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 2002 base-year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Hampton Roads Area for the next 11 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the NO_x and VOC MVEBs for transportation conformity purposes for the years 2011 and 2018. These MVEBs are displayed in the following table:

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

Year	VOC	NO _x
2011	37.846	50.387
2018	27.574	31.890

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

EPA is proposing to determine that the Hampton Roads 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 October 16, 2006 (redesignation request), October 18, 2006 (maintenance plan and MVEBs), October 12, 2006 (base-year emissions inventory), November 20, 2006 (supplement to base-year inventory), and February 13, 2007 (second supplement to base-year inventory) submittals satisfy the requirements of section 107(d)(3)(E) of the CAA.

A. The Hampton Roads Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Hampton Roads 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 the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

There are three ozone monitors in the Hampton Roads Area. As part of its redesignation request, Virginia referenced ozone monitoring data for the years 2003–2005 for the Hampton Roads Area. This data has been quality assured and is recorded in the AQS. The fourth-high 8-hour daily maximum concentrations, along with the three-year averages are summarized in Table 2. The Hampton and Suffolk—TCC monitoring sites had the highest 3-year average of the fourth highest daily maximum 8-hour average and are therefore used to make air quality determinations.

TABLE 2.—HAMPTON ROADS AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES, HAMPTON ROADS MONITORS, PARTS PER MILLION (PPM)

Monitor	AQS ID No.	2003	2004	2005	3-year average
Hampton	516500004	0.083	0.074	0.078	0.078
Suffolk—TCC	518000004	0.083	0.074	0.077	0.078
Suffolk—Holland	518000005	0.079	0.075	0.078	0.077

The average for the 3-year period 2003–2005 is 0.078 ppm.

The air quality data for 2003–2005 show that the Hampton Roads Area has attained the standard with a design value of 0.078 ppm. The data collected at the Hampton Roads Area monitors satisfy the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The VADEQ's request for redesignation for the Hampton Roads Area indicates that the data is complete and was quality assured in accordance with 40 CFR part 58. The VADEQ uses the AQS as the permanent 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, VADEQ 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 Hampton Roads Area has attained the 8-hour ozone NAAQS.

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

EPA has determined that the Hampton Roads Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under part D of Title I 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 which requirements are applicable to the Hampton Roads 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 came 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 at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section also sets forth EPA's views on the potential effect of the Court's ruling in *South Coast* on this redesignation action. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to this redesignation action so as to preclude redesignation, and does not prevent EPA from finalizing this redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that has been filed, imposes no impediment to moving forward with redesignation of this area to attainment, because in either circumstance redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

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 requirements (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_x SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_x 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 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the State.

Thus, we do not believe that these requirements are applicable requirements for purposes of

redesignation. 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 Hampton Roads Area will still be subject to these requirements after it 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 requirement. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 53099, October 19, 2001). Similarly, with respect to the NO_x SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_x SIP Call rules are not "an" 'applicable requirement' for purposes of section 110(1) because the NO_x 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. As explained later in this notice, two part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to the submission of the redesignation request.

Because the Virginia SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Virginia has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Requirements Under the 8-Hour Standard

The Hampton Roads Area was classified a Subpart 2, marginal 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 applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements

depending on the area's nonattainment classification.

The Hampton Roads Area is classified as a Subpart 2, marginal nonattainment area. We do not believe that any part of the Court's opinion would require that this subpart 2 classification be changed upon remand to EPA. However, even assuming for present purposes that the Hampton Roads Area would become subject to a different classification under a classification scheme created in a future rule in response to the court's decision, that would not prevent EPA from finalizing a redesignation for this area. For the reasons set forth below, we believe that any additional requirements that might apply based on that different classification would not be applicable for purposes of evaluating the redesignation request.

This belief is based upon (1) EPA's longstanding policy of evaluating redesignation requests in accordance with only the requirements due at the time the request was submitted; and (2) consideration of the inequity of applying retroactively any requirements that might be applied in the future.

First, at the time the redesignation request was submitted, the area was classified under Subpart 2 and was required to meet the Subpart 2 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992 Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment", Memorandum from John Calcagni, Director, Air Quality Management Division) See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, *e.g.*, also 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis). At the time the redesignation request was submitted, the Hampton Roads Area was classified as a marginal area under Subpart 2 and thus only Subpart 2 marginal area requirements are applicable for purposes of redesignation.

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted, but which might later become applicable. The D.C. Circuit has recognized the

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

Two Subpart 2 requirements became due for the Hampton Roads Area under section 182(a) of the CAA prior to redesignation—a 2002 base-year inventory, and the emissions statement requirement pursuant to section 182(a)(3)(B). Virginia has in its approved SIP an approved emissions statement rule for the 1-hour standard covering those portions of the 8-hour nonattainment area that were part of the previous 1-hour attainment area, which satisfies the emissions statement requirement for the 8-hour standard. See 65 FR 21315 (April 21, 2000). Virginia recently submitted a rulemaking to expand the VOC and NO_x Hampton Roads Emissions Control Area to include Gloucester County and Isle of Wight County. EPA approved this rulemaking on March 2, 2007 (72 FR 9441) and will become effective on April 2, 2007. Today, EPA is proposing to approve the 2002 base-year inventory for the Hampton Roads Area, which was submitted on October 12, 2006, and supplemented on November 20, 2006 and February 13, 2007, concurrently with its maintenance plan, into the Virginia SIP. A detailed evaluation of Virginia's 2002 base-year inventory for the Hampton Roads Area can be found in a Technical Support Document (TSD) prepared by EPA for this rulemaking. EPA has determined that the emission inventory and emissions statement requirements for the Hampton Roads Area have been satisfied.

EPA believes it is reasonable to interpret the general conformity and NSR requirements of part D as not requiring approval prior to

redesignation. With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 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) since 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 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995).

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, because PSD requirements will apply after redesignation. The rationale for this position 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 Hampton Roads Area, and therefore, Virginia need not have a fully approved Part D NSR program prior to approval of the redesignation request. Virginia's SIP-approved PSD program will become effective in Hampton Roads upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR at 12467–68); Cleveland-Akron-Lorain, Ohio (61 FR at 20458, 20469–70); Louisville, Kentucky (66 FR 53665, 53669 October 23, 2001); Grand Rapids,

Michigan (61 FR at 31831, 31834–37, June 21, 1996).

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Gloucester County and Isle of Wight County portions of the Hampton Roads Area were designated Unclassifiable/Attainment under the 1-hour standard and were never designated nonattainment for the 1-hour standard. Therefore, there are no outstanding 1-hour nonattainment area requirements these portions of the Hampton Roads Area would be required to meet. Thus, we find that the Court's ruling does not result in any additional 1-hour requirements for purposes of redesignation.

The portion of the Hampton Roads Area consisting of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, and the Counties of James City, and York, Virginia was an Attainment area subject to a Clean Air Act section 175A maintenance plan under the 1-hour standard. The Court's ruling does not impact redesignation requests for these types of areas.

First, there are no conformity requirements that are relevant for redesignation requests for any standard, including the requirement to submit a transportation conformity SIP.² Under longstanding EPA policy, EPA believes that it is reasonable to interpret the conformity SIP requirement as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. 40 CFR 51.390. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995) (Tampa, FL redesignation).

Second, with respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, this portion of the Hampton Roads Area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)) and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus the decision in *South Coast* should not alter requirements that would preclude EPA from finalizing the redesignation of this area.

4. Hampton Roads Has a Fully Approved SIP for Purposes of Redesignation

EPA has fully approved the Virginia SIP for the purposes of this redesignation. 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 at 25425 (May 12, 2003) and citations therein. The Hampton Roads Area was a 1-hour ozone maintenance area at the time of its designation as a marginal 8-hour ozone nonattainment area on April 30, 2004. As stated previously, two subpart 2 part D requirements became due for the Hampton Roads Area prior to redesignation—a 2002 base-year inventory, and the emissions statement requirement. VADEQ has submitted concurrently with its maintenance plan, a 2002 base-year inventory as a SIP revision. In this action, EPA is proposing approval of this inventory. The emissions statement requirement for the entire Hampton Roads Area was recently fulfilled on March 2, 2007 (72 FR 9441). Because there are no outstanding SIP submission requirements applicable for the purposes of the redesignation of the Hampton Roads Area, the applicable implementation plan satisfies all pertinent SIP requirements.

C. The Air Quality Improvement in the Hampton Roads 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 Hampton Roads Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

² Clean Air Act section 176(c)(4)(E) currently requires States to submit revisions to their SIPs to reflect certain federal criteria and procedures for

determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are

established in control strategy SIPs and maintenance plans.

TABLE 3.—TOTAL VOC AND NO_x EMISSIONS FOR 2002 AND 2005 IN TONS PER DAY (TPD)

Year	Point	Area *	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
2002	18.758	87.402	46.543	67.293	219.996
2005	20.091	91.980	42.320	50.591	204.982
Diff (02–05)	+1.333	+4.578	– 4.223	– 16.702	– 15.014
Nitrogen Oxides (NO_x)					
2002	91.403	57.961	31.002	93.844	274.210
2005	62.536	55.207	30.208	78.169	226.120
Diff (02–05)	– 28.867	– 2.754	– 0.794	– 15.675	– 48.090

* Area source category includes emissions from motor vehicle refueling.

Between 2002 and 2005, VOC emissions decreased by 15.014 tpd and NO_x emissions decreased by 48.090 tpd because of permanent and enforceable measures implemented by the Commonwealth and the federal government. These reductions, and anticipated future reductions, are due to the following permanent and enforceable measures.

Programs Currently in Effect

- (a) Tier 1;
- (b) Tier 2;
- (c) National Low Emission Vehicle (NLEV) Program; and
- (d) NO_x SIP Call.

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 Hampton Roads Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Hampton Roads 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 11 years after redesignation. The Commonwealth is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A and 175A(b). Section 175A(a) was met with the October 18, 2006 submission of the maintenance plan, because it states that Hampton Roads will maintain the 8-hour ozone NAAQS for at least 10 years after redesignation. Section 175A(b) was met with the October 18, 2006 submission of the maintenance plan, because it will replace the 1-hour maintenance plan update requirement that was due 8 years after redesignation of Hampton Roads to attainment. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for Hampton Roads meets the requirements of the CAA regarding

maintenance of the applicable 8-hour ozone standard.

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(a), 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. Section 175A(b) states that eight years after redesignation from nonattainment to attainment, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period 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.

Analysis of the Hampton Roads Area Maintenance Plan

(a) Attainment inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. VADEQ determined that the appropriate

attainment inventory year is 2005. That year establishes a reasonable year within the three-year block of 2003–2005 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date. The 2005 inventory is consistent with EPA guidance and is based on actual “typical summer day” emissions of VOC and NO_x during 2005 and consists of a list of sources and their associated emissions.

To develop the NO_x and VOC base year emissions inventories, VADEQ used the following approaches:

(i) Point source emissions were developed using the latest version of EPA’s Economic Growth Analysis System (EGAS 5.0).

(ii) Area source emissions were also developed using growth factors from EGAS 5.0 and then applied to the 2002 Area source inventory.

(iii) Mobile nonroad emissions were developed using EPA’s NONROAD 2005 model. The NONROAD 2005 model estimates fuel consumption and emissions of total hydrocarbons, carbon monoxide, nitrogen oxides, sulfur oxides, and particulate matter for all nonroad mobile source categories except for aircraft, locomotives, and commercial marine vessels (CMV).

(iv) Mobile on-road source emissions were calculated using EPA’s MOBILE6.2 mobile source inventory model. The Virginia Department of Transportation (VDOT) provided daily vehicle miles traveled (DVMT), average speed data for each road type by jurisdiction, and annual growth rates that were used to forecast DVMT into the future. Also, the Virginia Department of Motor Vehicles provided registration data that was specific to each jurisdiction. Mobile source emission projections include the National Low Emission Vehicle Program (NLEV), the 2004 Tier 2 and Low Sulfur Gasoline Rule, the 2004 and 2007 Heavy-Duty Diesel Vehicle Rules, and the 2006 Low Sulfur Diesel Rule. In

addition, James City, York, Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg were modeled with Phase II Reformulated Gasoline (RFG) while Gloucester and Isle of Wight were modeled with conventional gasoline fuel.

More detailed information on the compilation of the 2002, 2005, 2011, and 2018 inventories can found in the Technical Appendices, which are part of VADEQ's October 18, 2006 submittal.

(b) Maintenance Demonstration—On October 18, 2006, the VADEQ submitted a maintenance plan as required by section 175A of the CAA. The Hampton Roads maintenance plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that future emissions of VOC and NO_x will not exceed the attainment year 2005 emissions levels throughout the Hampton Roads Area through the year 2018. A maintenance demonstration need not be based on modeling. See

Wall v. EPA, supra; Sierra Club v. EPA, supra. See also 66 FR at 53099–53100; 68 FR at 25430–32.

Tables 4 and 5 specify the VOC and NO_x emissions for the Hampton Roads Area for 2005, 2011, and 2018. The VADEQ chose 2011 as an interim year in the maintenance demonstration period to demonstrate that the VOC and NO_x emissions are not projected to increase above the 2005 attainment level during the time of the maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2005–2018 (TPD)

Source category	2005 VOC emissions	2011 VOC emissions	2018 VOC emissions
Point	20.091	23.280	26.700
Area ¹	91.980	100.960	112.790
Mobile ²	50.591	37.846	27.574
Nonroad	42.320	33.912	31.315
Total	204.982	195.998	198.379

¹ Includes vehicle refueling emissions and the benefits of selected local controls (Stage I, CTG RACT, and open burning). Also includes site/project specific emissions estimates and projections.

² Includes transportation provisions.

TABLE 5.—TOTAL NO_x EMISSIONS FOR 2005–2018 (TPD)

Source category	2005 NO _x emissions	2011 NO _x emissions	2018 NO _x emissions
Point	62.536	69.333	75.241
Area ¹	55.207	56.974	60.105
Mobile ²	78.169	50.387	31.890
Non-road	30.208	29.116	23.093
Total	226.120	205.810	190.329

¹ Includes selected local controls (open burning). Also includes site/project specific emissions estimates and projections.

² Includes transportation provisions.

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

Currently in Effect:

- The National Low Emission Vehicle (NLEV) program;
- Open burning restrictions for James City, York, Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg;
- Control Technology Guideline (CTG) Reasonable Available Control Technology (RACT) requirements for James City, York, Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg;
- Stage I gasoline vapor recovery requirements for James City, York, Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg;

- Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and

- Low sulfur gasoline.

Additionally, the following programs are in place and either effective or are due to become effective:

- Heavy duty diesel on-road (2004/2007) and low sulfur on-road (2006); 66 FR 5002, (January 18, 2001)
- Non-road emission standards (2008) and off-road diesel fuel (2007/2010); 69 FR 38958 (June 29, 2004).

Lastly, to further improve air quality and to provide room for industrial and population growth while maintaining emissions in the area to less than 2005 levels, the Commonwealth of Virginia has initiated rulemaking to implement the following programs:

- Implement the Stage I requirements of 9 VAC 5 Chapter 40, Article 37 in Isle of Wight and Gloucester;
- Implement open burning restriction requirements of 9 VAC 5 Chapter 40, Article 40 in Isle of Wight and Gloucester; and

- Implement existing source CTG RACT requirements of 9 VAC 5 Chapter 40, Articles 5–6, 24–36, and 39 in Isle of Wight and Gloucester.

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 Hampton Roads Area.

(c) Monitoring Network—There are three monitors measuring ozone in the Hampton Roads Area. VADEQ will continue to operate its current air quality monitors (located in the Hampton Roads Area), in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—In addition to maintaining the key elements of its regulatory program, the Commonwealth will acquire ambient and source emission data to track attainment and maintenance. The Commonwealth 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 as they actually emission update of stationary sources, the Highway Performance Monitoring System (HPMS) vehicle miles traveled 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 periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR 51, subpart A), beginning in 2005.

(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 CAA 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 measure(s) 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 Hampton Roads Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_x emissions in the Area remaining at or below 2005 levels. The Commonwealth's maintenance plan projects VOC and NO_x emissions to decrease and stay below 2005 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

The Commonwealth's maintenance plan lays out 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_x emissions exceed the regional emissions budgets, which would be 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_x 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 regional emissions budget for VOC or NO_x is exceeded, the following control strategies will be implemented as follows:

- Preparation of a complete VOC and NO_x emission inventory; and
- The expanded implementation of one or more of the following control strategies, listed in Table 6, that are not currently in place in the Hampton Roads Area.

TABLE 6.—MAINTENANCE PLAN CONTINGENCY MEASURE OPTIONS

Control strategy	Description
9 VAC 5 Chapter 40, Article 42	Emission Standards for Portable Fuel Container Spillage.
9 VAC 5 Chapter 40, Article 47	Emissions Standards for Solvent Metal Cleaning Operations.
9 VAC 5 Chapter 40, Article 48	Emissions Standards for Mobile Equipment Repair and Refinishing Operations.
9 VAC 5 Chapter 40, Article 49	Emissions Standards for Architectural and Industrial Maintenance Coatings.
9 VAC 5 Chapter 40, Article 50	Emission Standards for Consumer Products.
9 VAC 5–40–300 of 9 VAC 5 Chapter 40, Article 4	General Process Operations—Standard for Volatile Organic Compounds (non-CTG RACT for major sources).
9 VAC 5–40–310 of 9 VAC 5 Chapter 40, Article 4	General Process Operations—Standards for Nitrogen Oxides (non-CTG RACT for major sources).

(ii) 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 at a monitor located in the Hampton Roads monitoring network, the VADEQ will implement two of the following control strategies as follows:

- The expanded implementation of one or more of the control strategies, listed in Table 6 that is not currently in place in the Hampton Roads Area.

(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 in any subsequent ozone

season—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 in the Hampton Roads monitoring network following the implementation of the requirements listed in the previous section (section e(ii)) and in any subsequent ozone season, two additional control strategies from Table 6 will be implemented.

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;³

³ 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 the Hampton Roads Area 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.

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

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 Hampton Roads area meets the requirements of section 175A of the Act.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Hampton Roads Maintenance Plan 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., RFP 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 emission 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 NAAQS. If a transportation plan does not “conform,” most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted “control strategy” SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein “adequate” for use in determining transportation conformity. 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 SIP as required by section 176(c) of the CAA. EPA’s substantive criteria for determining “adequacy” of a 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 PM_{2.5} 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 consults this guidance and follows this rulemaking in making its adequacy determinations.

The MVEBS for the Hampton Roads Area are listed in Table 1 of this document for 2011 and 2018, and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2011 and 2018 only). 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 2018 safety margin: Hampton Roads first attained the 8-hour ozone NAAQS during the 2003 to 2005 time period. The Commonwealth used 2005 as the year to determine attainment levels of emissions for Hampton Roads. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2005 equaled 204.982 tpd of VOC and 226.120 tpd of NO_x. The VADEQ projected emissions out to the year 2018 and projected a total of 198.379 tpd of VOC and 190.329 tpd of NO_x from all sources in Hampton Roads. The safety margin for 2018 would be the difference between these amounts, or 6.603 tpd of VOC and 35.791 tpd of NO_x. 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. Table 7 shows the safety margins for the 2011 and 2018 years.

TABLE 7.—2011 AND 2018 SAFETY MARGINS FOR HAMPTON ROADS

Inventory year	VOC emissions (tpd)	NO _x emissions (tpd)
2005 Attainment	204.982	226.120
2011 Interim	195.998	205.810
2011 Safety Margin	8.984	20.310
2005 Attainment	204.982	226.120
2018 Final	198.379	190.329
2018 Safety Margin	6.603	35.791

The VADEQ allocated 1,000 tpd VOC and 3,000 tpd NO_x to the 2011 interim VOC projected on-road mobile source emissions projection and the 2011 interim NO_x projected on-road mobile source emissions projection to arrive at

the 2011 MVEBs. For the 2018 MVEBs the VADEQ allocated 1,000 tpd VOC and 3,000 tpd NO_x from the 2018 safety margins to arrive at the 2018 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 8 shows the final 2009 and 2018 MVEBs for the Hampton Roads Area.

TABLE 8.—2011 AND 2018 FINAL MVEBS FOR HAMPTON ROADS

Inventory year	VOC emissions (tpd)	NO _x emissions (tpd)
2011 Projected on-road mobile source projected emissions	36.846	47.387
2011 Safety Margin Allocated to MVEBs	1.000	3.000
2011 MVEBs	37.846	50.387
2018 Projected on-road mobile source projected emissions	26.574	28.890
2018 Safety Margin Allocated to MVEBs	1.000	3.000
2018 MVEBs	27.574	31.890

C. Why Are the MVEBs Approvable?

The 2011 and 2018 MVEBs for the Hampton Roads Area are approvable because the MVEBs for NO_x and VOCs 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 Hampton Roads Maintenance Plan?

The MVEBs for the Hampton Roads Area maintenance plan are being posted to EPA's conformity Web site concurrently 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 and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Hampton Roads 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 Hampton Roads Area MVEBs will also be announced on EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/index.htm> (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions").

VIII. Proposed Actions

EPA is proposing to determine that the Hampton Roads Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Hampton Roads Area from nonattainment to attainment for the 8-hour ozone NAAQS. 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 Hampton Roads Area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Hampton Roads Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for the Hampton Roads Area, submitted on October 18, 2006, as a revision to the Virginia SIP. EPA is proposing to approve the maintenance plan for the Hampton Roads Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the 2002 base-year inventory for the Hampton Roads Area, and the MVEBs submitted by Virginia for the Hampton Roads 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.

IX. 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. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have 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 approve a state rule implementing a Federal requirement, 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

approves a state rule implementing a Federal standard.

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 Hampton Roads Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, 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 dioxide, 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: April 5, 2007.

Judith Katz,

Acting Regional Administrator, Region III.
[FR Doc. E7-7017 Filed 4-12-07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

49 CFR Part 39

[Docket OST 2007-26829]

RIN 2105-AB87

Transportation for Individuals With Disabilities: Passenger Vessels

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Department is extending through June 22, 2007, the period for interested persons to submit comments to its proposed rule to amend its Americans with Disabilities Act regulations concerning passenger vessels.

COMMENT CLOSING DATE: Comments should be submitted by June 22, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number OST 2007-26829 by any of the following methods:

- **Web site:** <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
- **Federal e-Rulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** (202) 493-2251.
- **Mail:** Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- **Hand Delivery:** To the Docket Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number OST-2007-26829 or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

Docket: You may view the public docket through the Internet at <http://dms.dot.gov> or in person at the Docket Management System office at the above address.

The Department of Transportation is in the process of moving to a new building. It is anticipated that the Docket Office will move to its new location before the end of the extended comment period. We do not yet have the

complete address for the Docket Office in the Department's new building. The Department will publish a **Federal Register** notice when this information becomes available. The address change will not affect electronic submissions, and mail submissions will be forwarded to the new address.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590-0001. (202) 366-9306 (voice); (202) 755-7687 (TDD); bob.ashby@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

On January 23, 2007, the Department of Transportation issued a notice of proposed rulemaking (NPRM) (72 FR 2833) to amend its Americans with Disabilities Act (ADA) rules to add requirements concerning passenger vessels. The comment period for this NPRM was scheduled to end on April 23, 2007. A 90-day comment period is commonly provided for significant proposed rules.

On January 31, 2007, the Cruise Lines International Association (CLIA) requested a 120-day extension of the comment period. CLIA cited as reasons for its request the need for potential commenters to consider the questions the Department asked in the preamble to the NPRM and the relationship between the NPRM and ongoing work of the Access Board concerning accessibility guidelines for passenger vessels.

The Department believes that some extension of the comment period can be justified and that the Department can extend the comment period for a reasonable time without unduly delaying work toward a final rule. However, we do not believe that a 120-day extension, which would more than double the length of the original comment period, is necessary to allow interested persons to provide informed comments to the Department, and we are concerned that such a lengthy extension could create unnecessary delay.

Consequently, the Department will extend the comment period for 60 days, through June 22, 2007. The Department does not anticipate the need for any further extensions. Given the additional time provided for comments, we urge interested persons to make every effort to provide detailed information concerning the issues they raise.