TABLE NO. 3.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
203.01	Advanced age, age 62 or older.	Marginal or none.	Unskilled or none.	Disabled.
*	*	*	*	*
203.10	Advanced age, age 57–61.	Limited or less	None	Disabled.
*	*	*	*	*

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

8. The authority citation for subpart I continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383(b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

9. Amend § 416.962 by revising the paragraph heading and the first sentence of paragraph (b) to read as follows:

§ 416.962 Medical-vocational profiles showing an inability to make an adjustment to other work.

* * * * *

(b) *If you are at least 57 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (*see* §§ 416.920(c), 416.921, and 416.923), are of advanced age (age 57 or older, *see* § 416.963), have a limited education or less (*see* § 416.964), and have no past relevant work experience (*see* § 416.965), we will find you disabled. * * *

10. Amend § 416.963 by revising paragraphs (c), (d), and (e) to read as follows:

§ 416.963 Your age as a vocational factor.

* * * * *

(c) *Younger person.* If you are a younger person (under age 52), we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 47–51 are more limited in their ability to adjust to other work than persons who have not attained age 47. See Rule 201.17 in appendix 2 of subpart P of part 404 of this chapter.

(d) *Person closely approaching advanced age.* If you are closely approaching advanced age (age 52–56), we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

(e) *Person of advanced age.* We consider that at advanced age (age 57 or older) age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age, including persons in this category who are age 62 or older. See § 416.968(d)(4).

* * * * *

11. Amend § 416.968 by revising the first, fifth, and sixth sentences of paragraph (d)(4) to read as follows:

§ 416.968 Skill requirements.

* * * * *

(d) *Skills that can be used in other work (transferability).*

* * * * *

(4) *Transferability of skills for individuals of advanced age.* If you are of advanced age (age 57 or older), and you have a severe impairment(s) that limits you to *sedentary or light work,* we will find that you cannot make an adjustment to other work unless you have skills that you can transfer to other skilled or semiskilled work (or you have recently completed education which provides for direct entry into skilled work) that you can do despite your impairment(s). * * * If you are of advanced age but have not attained age 62, and you have a severe impairment(s) that limits you to no more than *light* work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see § 416.967(b)). If you are age 62 or older and you have a severe impairment(s) that limits you to no more than *light* work, we will find that you have skills that are transferable to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. * * *

[FR Doc. 05–21975 Filed 11–3–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2005–VA–0013; FRL–7993–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the Shenandoah National Park 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 Shenandoah National Park area (the SNP area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the VADEQ submitted a SIP revision consisting of a maintenance plan for the SNP 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 SNP area has attained the 8-hour ozone NAAQS based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2002–2004. EPA's proposed approval of the 8-hour ozone redesignation request is based on its

determination that the SNP 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 maintenance plan for the SNP 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 5, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0013 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*.

Mail: R03–OAR–2005–VA–0013, 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–0013. 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 or e-mail. The EPA RME and the Federal 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, 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*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA.

Table of Contents

I. What Actions Are EPA Proposing to Take?

On September 21, 2005, VADEQ formally submitted a request to redesignate the SNP area from nonattainment to attainment of the 8-hour NAAQS for ozone. On September 23, 2005, Virginia submitted a maintenance plan for the SNP area as a SIP revision, to ensure continued attainment over the next 10 years. The SNP area is composed of those portions of Page and Madison Counties located within the boundaries of Shenandoah National Park. It is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the SNP 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 SNP 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 SNP 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_X) for the SNP 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 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 SNP area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 25, 2004

and published on April 30, 2004 (69 FR 23857).

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 SNP area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and is subject to the requirements of subpart 1.

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 from the 3-year period of 2002–2004 indicates that the SNP area has a design value of 0.082 ppm. Therefore, the ambient ozone data for the SNP area indicates no violations of the 8-hour ozone standard. Available preliminary monitoring data for 2005 indicates continued attainment of the 8-hour ozone standard.

B. The Shenandoah National Park Area

The SNP area consists of those portions of Page and Madison Counties located within the boundaries of the Shenandoah National Park. Prior to its designation as an 8-hour ozone nonattainment area, the SNP area was designated as an attainment area for the 1-hour ozone nonattainment NAAQS.

On September 21, 2005, the VADEQ requested that the SNP area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 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 SNP area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is 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 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.

IV. Why Is EPA Taking These Actions?

On September 21, 2005, the VADEQ requested redesignation of the SNP area to attainment for the 8-hour ozone

standard. On September 23, 2005, the VADEQ submitted a maintenance plan for the SNP area as a SIP revision, to assure continued attainment over the next 10 years. EPA has determined that the SNP 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 SNP 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 SNP 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 MVEBs for NO_X and VOC 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_X	VOC
2004	0.075	0.042
2009	0.057	0.038
2015	0.035	0.029

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

EPA is proposing to determine that the SNP nonattainment 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 September 21, 2005 and September 23, 2005 submittals satisfy the requirements of section 107(d)(3)(E) of the CAA.

A. The Shenandoah National Park Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the SNP 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 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 SNP area there is one ozone monitor, located in Madison County/Big Meadows (the Big Meadows Monitor), 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.—SHENANDOAH NATIONAL PARK NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; BIG MEADOWS MONITOR, AIRS ID 51–113–0003

Year	Annual 4th high reading (ppm)
2002	0.086
2003	0.086
2004	0.075

The average for the 3-year period 2002 through 2004 is 0.082 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 Big Meadows monitor satisfies 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 SNP area indicates that the data was quality assured in accordance with 40 CFR part 58. The VADEQ uses AIRS 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 SNP area has attained the 8-hour ozone NAAQS.

B. The Shenandoah National Park 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 SNP 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_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 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 SNP 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 requirement. 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 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_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(l) 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. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to 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 Area Requirements Under the 8-Hour Standard

The SNP area was designated a basic 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. Since the SNP area was in attainment for the 1-hour standard at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004, no Part D submittals under the 1-hour standard were required or made for this area.

Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. The SNP area was classified as a subpart 1 nonattainment area; therefore, no subpart 2 requirements apply to this area.

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. Because the Commonwealth submitted a complete redesignation request for the SNP area prior to the deadline for any submissions required under the 8-hour standard, we have determined that the part D requirements do not apply to the SNP area for the purposes of redesignation.

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 general conformity and NSR requirements 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, 438–440 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 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 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 SNP 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 the area upon redesignation to attainment in the SNP area. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, 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).

3. The Area Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the Virginia SIP for the purposes of 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 25425 (May 12, 2003) and citations therein. The SNP area was in attainment for the 1-hour standard at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004. Because the area had not previously been designated as nonattainment, no Part D SIP submittals were previously required. Because there are no current SIP submission requirements applicable for the purposes of redesignation of the SNP area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D 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 for the SNP area, and therefore they need not be approved into the SIP prior to redesignation.

4. The Air Quality Improvement in the Shenandoah National Park 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. Emissions reductions attributable to these rules are shown in Table 3. It should be noted that within the SNP area boundaries, no point sources with emissions greater than 10 tons per year (tpy) of either VOC or NO_X exist, therefore point source emissions equal zero.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 (TPD)

Year	Point	Area*	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	0	0.390	0.182	0.052	0.624
Year 2004	0	0.375	0.162	0.042	0.579
Diff. (02–04)	0	−0.014	−0.020	−0.010	−0.044
Nitrogen Oxides (NO_X)					
Year 2002	0	0.212	0.145	0.089	0.446
Year 2004	0	0.204	0.136	0.075	0.415
Diff. (02–04)	0	−0.008	−0.009	−0.014	−0.031

* Area source category includes emissions from motor vehicle refueling.

Between 2002 and 2004, VOC emissions were reduced by 0.044 tpd, and NO_X emissions were reduced by 0.031 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in the SNP area:

Programs Currently in Effect

(a) National Low Emission Vehicle (NLEV);

(b) Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and,

(c) Low-sulfur gasoline.

Virginia has demonstrated that the implementation of permanent enforceable emissions controls have reduced local VOC and NO_X emissions. Nearly all of these reductions are attributable to mobile source emission controls such as NLEV and Tier I programs. These mobile programs produced 0.010 tpd of VOC reductions and 0.014 tpd of NO_X reductions.

Additionally, Virginia has indicated in its submittal that the NO_X SIP Call took effect in 2004. While there are no subject sources currently located in the SNP area, Virginia's redesignation request explains that the SNP area indirectly benefits in terms of improved air quality due to this program. The VADEQ estimates that between 2003 and 2004, emissions of NO_X were reduced from facilities located within Virginia and subject to the NO_X SIP Call by approximately 7,400 tons during the ozone season (May 1st through September 30th). The VADEQ believes that these emission reductions, which are taking place outside the SNP area, are significant in improving the SNP area's air quality.

Other regulations, such as the non-road diesel, 69 FR 39858 (June 29, 2004), the heavy duty engine and vehicle standards, 66 FR 5002 (January 18, 2001) and the new Tier 2 tailpipe standards for automobiles, 65 FR 6698 (January 10, 2000), are also expected to greatly reduce emissions throughout the country and thereby reduce the transported emissions impacting the SNP area monitor. The Tier 2 standards came into effect in 2004, and by 2030, EPA expects that the new Tier 2 standards will reduce NO_X emissions by about 74 percent. 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.

5. The Shenandoah National Park Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the SNP 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.

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 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 Shenandoah National Park 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_X emissions inventories for the SNP area, including area, mobile on-road, and mobile non-road sources for a base year of 2002. The SNP area does not have any point sources with actual emissions greater than 10 tpy, therefore they were not included in the emissions inventory (see the point source discussion). 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 SNP 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.

To develop the NO_X and VOC base year emissions inventories, VADEQ used the following approaches and sources of data:

(i) *Point source emissions*—The SNP area is rural and considered a Class I area. No industrial facilities exist within the Shenandoah National Park boundaries. Also, there are no other point sources, such as those used for heating purposes, with actual emissions of more than 10 tpy of either NO_X or VOC. A complete point source emissions inventory may be found in Air Emissions Inventory for Shenandoah National Park, which is in Appendix B of both the maintenance plan and the redesignation request that are in the docket for this proposed action. The registration database used and maintained by VADEQ also does not contain any sources emitting more than 10 tpy of ozone precursors. Because the SNP area lies solely within the boundaries of Shenandoah National Park, EPA believes VADEQ's assumption that there will be no point source growth in this inventory area is reasonable.

(ii) *Area source emissions*—The 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.

The 2002 emissions data for forest fires was developed to estimate wildfire emissions. However, 2002 was not considered a typical year for wildfires. The VADEQ stated that an analysis of 10 years of fire data was used to develop a ''typical'' year's estimates for wildfire emissions in the SNP area. This ''typical'' year is approximately 20 percent less than actual emissions estimated for 2002. Based on this information, the SNP area wildfire data were estimated by decreasing the emissions from 2002 downward 20 percent. It should be noted that the Shenandoah National Park has a fire management plan that looks forward 5 years and recommends prescribed burning for the health and well being of the wilderness. These 5-year plans are conservative in nature; generally weather and resource constraints do not allow the full implementation of all planned fires in any year. The 5-year plan tries to manage prescribed burning throughout the Shenandoah National Park; therefore assuming a growth factor larger than 1.0000 would overestimate emissions from this category.

(iii) *On-road mobile source emissions*—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. The SNP area traffic data was obtained from the report entitled, ''NPS Traffic Monitoring Program, Coverage Count, and Data Reporting Project for Shenandoah National Park,'' dated March 12, 2004, which is in Appendix B of both the maintenance plan and the redesignation request that are in the docket for this proposed action. This report included VMT for 5 roadway segments within Shenandoah National Park. Since the SNP area only includes the portion of Shenandoah National Park within the boundaries of Page and Madison Counties, the VMT was adjusted downward to exclude that occurring outside the SNP area boundary. Based on information found in the previously cited document, vehicle travel through the Park appears to have been declining in recent years. A pollutant emission rate, associated with these particular levels of activity, was estimated using MOBILE6.2 emissions factors. The VADEQ has provided detailed data summaries to document the calculations of mobile on-road VOC and NO_X emissions for 2002, as well as for the projection years of 2004, 2009, and 2015 (shown in tables 4 and 5 below). The mobile on-road source emissions projections include the National Low Emissions 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.

(iv) *Mobile non-road emissions*—The mobile non-road emissions were calculated using the NONROAD2004

model, which incorporates the projected emission reductions resulting from EPA's Clean Air Non-road Diesel Rule. The mobile non-road emissions calculated by the model were scaled down based on equipment population data to account for a growth factor of 1.0 in the non-road category. The assumption of no growth is supported by the very nature of the Shenandoah National Park, which strives to minimize the human footprint on the wilderness area, as well as the visitation data that shows a declining trend in Shenandoah National Park visitors since 1993.

The 2004 attainment year VOC and NO_X emissions for the SNP 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 Virginia has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On September 23, 2005, the VADEQ submitted a SIP revision to supplement its September 21, 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_X remain at or below the attainment year 2004 emissions levels throughout the SNP 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_X emissions for the SNP 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_X 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 [1]	0.042	0.028	0.019
Nonroad	0.162	0.109	0.081
Area [2]	0.375	0.378	0.383
Point	0	0	0
Total	0.579	0.514	0.483

[1] Includes transportation conformity provisions.
[2] Includes vehicle refueling emissions.

TABLE 5.—TOTAL NO_X EMISSIONS 2004–2015 (TPD)

Source category	2004 NO_X emissions	2009 NO_X emissions	2015 NO_X emissions
$Mobile_1$	0.075	0.047	0.025
Nonroad	0.136	0.110	0.077
Area	0.204	0.204	0.204
Point	0	0	0
Total	0.415	0.361	0.306

[1] Includes transportation conformity provisions.

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

In addition to the permanent and enforceable measures, the Clean Air Interstate Transport Rule (CAIR), promulgated May 12, 2005, (70 FR 25161) should have positive impacts on the Commonwealth's air quality. CAIR, which will be implemented in the eastern portion of the country in two phases (2009 and 2015) should reduce long range transport of ozone precursors, which will have a beneficial effect on the air quality in the SNP area.

Based upon 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 SNP area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the SNP area. Virginia and the National Park Service, which operates the Big Meadows monitoring station, 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. Additionally, federal programs such as the NLEV program, Tier2/Low Sulfur Gasoline Rule, 2007 On-Road Diesel Engine Rule, and Federal Non-road Engine/Equipment Rules will continue to be implemented on a national level. These programs help provide the reductions necessary for the SNP area to maintain attainment.

In addition to maintaining the key elements of its regulatory program, the Commonwealth will acquire ambient and source emissions data to track attainment and maintenance. 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 the 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 SNP 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 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2015. The Commonwealth's maintenance plan lays out two 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 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_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 2004 attainment level emissions for VOC or NO_X is exceeded or is predicted to be exceeded, the following measure will be implemented:

- Preparation of a complete and thorough VOC and NO_X emission inventory for the current year.

(ii) *In the event that a violation of the 8-hour ozone standard occurs at the Madison County/Big Meadows monitor*—The maintenance plan states that in the event that a violation of the ozone standard occurs at the Big Meadows monitor, the Commonwealth of Virginia, in consultation with EPA Region III and the Shenandoah National Park, will implement one of the following measures:

- The implementation of Stage I vapor recovery on the gasoline stations located in the SNP area;
- The Shenandoah National Park would expand their implementation of a series of voluntary, episodic control measures through an Air Quality Action Day Program (AQADP). The program will be based upon ozone forecasts created for the Shenandoah National Park by VADEQ meteorological staff. The AQADP would be operated by the Shenandoah National Park in partnership with the VADEQ. The VADEQ would issue an Air Quality Action Day forecast when 8-hour ozone levels are predicted to exceed 0.08 ppm. The VADEQ would notify the Shenandoah National Park representatives via email no later than 3 p.m. of the afternoon before the exceedance is forecast. This information would also be provided to major media and other interested parties. The information would be included on the VADEQ Web site, *http://www.deq.virginia.gov/airquality*. On days when 8-hour ozone levels are forecast to exceed 0.08 ppm (code orange or code red days), the Shenandoah National Park would implement the following actions or similar actions deemed appropriate by the park Superintendent:

(1) Encourage employees to decrease vehicle use by car pooling and reducing the number of non-essential trips; (2) Postpone or decrease the use of mowers, weed eaters, chainsaws, electroshockers, and other similar gasoline engine equipment until the ozone level drops; (3) Postpone painting projects that use oil based paints or solvents; and (4) Encourage refueling of vehicles in the early morning or late evening hours.

- The Commonwealth would implement of one or more of the following Virginia's area source VOC regulations throughout the entire SNP area: 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); Solvent Cleaning (9 VAC 5 Chapter 40 Article 47); and Emission Standards for Consumer Products (9 VAC 5 Chapter 40, Article 50).

The following schedule for adoption, implementation and compliance applies to the contingency measures concerning the option of implementing either Stage I vapor recovery requirements or one or more area source VOC regulations.

- 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; [1]
- Compliance with regulation to be achieved within 12 months of adoption.

The following schedule for adoption, implementation and compliance applies to the contingency measures concerning the option of implementing an AQADP.

- Implementation of meteorological forecasts for the SNP area commencing 60 days after a recorded violation.
- Implementation of the AQADP, based on meteorological forecasts created by VADEQ, no later than 60 days after VADEQ notifies the SNP Superintendent that the meteorological forecasts are available.

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

[1] In the event that implementation of Stage I vapor recovery is selected as a contingency measure, Virginia would notify all sources located in the SNP area within 6 months after notification received from EPA that the contingency measure must be implemented, or within three months after a recorded violation. The newly subject Stage I vapor recovery sources would be required to comply with Stage I vapor recovery requirements no later than 12 months from the date VADEQ adopts the regulation.

submitted by Virginia for the SNP area meets the requirements of section 175A of the Act.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Shenandoah National Park Area Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets (MVEBs)?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*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 emissions budgets.'' Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A 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 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 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 SNP 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 SNP 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 SNP area. The total emissions from area, mobile on-road, and mobile non-road sources in 2004 equaled 0.579 tpd of VOC and 0.415 tpd of NO_X. The VADEQ projected emissions out to the year 2015 and projected a total of 0.493 tpd of VOC and 0.316 tpd of NO_X from all sources in the SNP area. The safety margin for the SNP area for 2015 would be the difference between these amounts, or 0.086 tpd of VOC and 0.099 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 6 shows the safety margins for the 2009 and 2015 years.

TABLE 6.—2009 AND 2015 SAFETY MARGINS FOR THE SHENANDOAH NATIONAL PARK AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2004 Attainment	0.0579	0.415
2009 Interim	0.0525	0.371
2009 Safety Margin	0.054	0.044
2004 Attainment	0.579	0.415
2015 Final	0.493	0.316
2015 Safety Margin	0.086	0.099

The VADEQ allocated 0.010 tpd of the safety margin to both the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2015 MVEBs the VADEQ allocated 0.010 tpd NO_X and 0.010 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 shows the final 2009 and 2015 MVEBS for the SNP area.

TABLE 7.—2009 AND 2015 FINAL MVEBS FOR THE SHENANDOAH NATIONAL PARK AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2009 projected on-road mobile source projected emissions	0.028	0.047
2009 Safety Margin Allocated to MVEBs	0.010	0.010
2009 MVEBs	0.038	0.057
2015 projected on-road mobile source projected emissions	0.019	0.025
2015 Safety Margin Allocated to MVEBs	0.010	0.010
2015 MVEBs	0.029	0.035

C. Why Are the MVEBs Approvable?

The 2004, 2009 and 2015 MVEBs for the SNP area are approvable because the MVEBs for NO_X 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 Shenandoah National Park Area Maintenance Plan?

The MVEBs for the SNP area 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 budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the SNP 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 SNP area 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 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 SNP area has attained the 8-hour ozone NAAQS. The EPA is also proposing to approve the Commonwealth of Virginia's September 21, 2005 request for the SNP area to be designated 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 SNP 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 September 23, 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 as described more fully above. 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. 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 SNP 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 28, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–22031 Filed 11–3–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[OAR–2003–0228, FRL–7993–2]

RIN 2060–AN11

Protection of Stratospheric Ozone: Listing of Ozone Depleting Substitutes in Foam Blowing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today the Environmental Protection Agency (EPA) is proposing to determine that HCFC–22 and HCFC–142b are unacceptable for use in the foam sector under the Significant New Alternatives Policy (SNAP) Program under section 612 of the Clean Air Act. The SNAP program reviews alternatives to Class I and Class II ozone depleting substances and approves use of alternatives which do not present a greater risk to public health and the environment than the substance they replace or than other available substitutes. Specifically, EPA is taking two actions. First, in response to a court decision upholding a challenge to EPA's July 2002 final rule finding HCFC–22 and HCFC–142b acceptable subject to Narrowed Use Limits in three foam end uses, we are proposing to find HCFC–22 and HCFC–142b unacceptable as substitutes for HCFC–141b in the foam end uses of commercial refrigeration, sandwich panels, slabstock and ''other'' foams. Second, in the July 2002 final rule, EPA withdrew a proposed action to find HCFC–22 and HCFC–142b unacceptable as substitutes for CFCs in all foam end uses. We are now issuing a new proposal to find HCFC–22 and HCFC–142b unacceptable as substitutes for CFCs in all foam end uses.

DATES: Comments on this proposed rule must be received on or before December 5, 2005, unless a public hearing is requested. If requested by November 21, 2005 a hearing will be held on December 5, 2005 and the comment period will be extended until January 3, 2006 by a document published in the **Federal Register**. Inquires regarding a public hearing should be directed to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0507 by one of the following methods:

- Federal eRulemaking portal www.regulations.gov. Follow the on-line instructions for submitting comments;