

**Boeing:** Docket No. FAA-2005-22383;  
Directorate Identifier 2005-NM-102-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by October 27, 2005.

#### Affected ADs

(b) Accomplishing the requirements of paragraph (f) of this AD terminates the corresponding inspection requirements for the upper deck tension tie as required by paragraphs (c) and (d) of AD 2004-07-22, amendment 39-13566, as those paragraphs apply to inspections of SSI F-19A, as identified in Boeing Document No. D6-35022, "Supplemental Structural Inspection Document," Revision G, dated December 2000. All other requirements of AD 2004-07-22 continue to apply.

**Applicability:** (c) This AD applies to Boeing Model 747-100B SUD, 747-300, 747-400, and 747-400D series airplanes; and Model 747-200 series airplanes having a stretched upper deck; certificated in any category; as identified in Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005.

#### Unsafe Condition

(d) This AD results from new reports of severed tension ties, as well as numerous reports of cracked tension ties, broken fasteners, and cracks in the frame, shear web, and shear ties adjacent to tension ties for the upper deck. We are issuing this AD to detect and correct cracking of the tension ties, shear webs, and frames of the upper deck, which could result in rapid decompression of the airplane.

**Compliance:** (e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Repetitive Inspections and Corrective Actions

(f) Do repetitive detailed and high frequency eddy current inspections, as applicable, for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and related investigative and corrective actions as applicable, by doing all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005, except as provided by paragraphs (g) and (h) of this AD. Do the initial and repetitive Stage 1 and Stage 2 inspections at the applicable times specified in Paragraph 1.E., "Compliance," of the service bulletin, except as provided by paragraphs (f)(1), (f)(2), and (f)(3) of this AD. Any applicable investigative and corrective actions must be done before further flight. Doing the initial Stage 2 inspection ends the repetitive Stage 1 inspections.

(1) For any airplane not identified in and subject to inspections in accordance with Boeing Service Bulletin 747-53-2483: Do the initial Stage 1 inspection in accordance with Boeing Alert Service Bulletin 747-53A2507 before the accumulation of 8,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever is later.

(2) Where Paragraph 1.E., "Compliance," of the service bulletin specifies a compliance time relative to the original issue date of the service bulletin, this AD requires compliance before the specified compliance time after the effective date of this AD.

(3) For any airplane that reaches the applicable compliance time for the initial Stage 2 inspection (as specified in Table 1, Compliance Recommendations, under paragraph 1.E. of the service bulletin) before reaching the applicable compliance time for the initial Stage 1 inspection: Doing the initial Stage 2 inspection eliminates the need to do the Stage 1 inspection.

#### Exception to Corrective Action Instructions

(g) If any discrepancy; including but not limited to cracking, or broken, loose, or missing fasteners; is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005, specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy using a method approved in accordance with paragraph (i) of this AD.

#### No Reporting Requirement

(h) Although Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005, specifies reporting inspection findings to the manufacturer, this AD does not include that requirement.

#### Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on August 24, 2005.

#### Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 05-17979 Filed 9-9-05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[R03-OAR-2005-VA-0007;FRL-7966-6

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. Virginia is requesting that the city of Fredericksburg, Spotsylvania County, and Stafford County (the Fredericksburg Nonattainment Area) be redesignated as attainment for the eight-hour ozone national ambient air quality standard (NAAQS). The Commonwealth's SIP revision establishes a maintenance plan for the Fredericksburg Nonattainment Area that provides requirements for continued attainment of the eight-hour ozone NAAQS for the next 10 years. EPA is proposing approval of the redesignation request and revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before October 12, 2005.

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

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

Agency Web site: <http://www.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: [campbell.dave@epa.gov](mailto:campbell.dave@epa.gov).  
Mail: R03-OAR-2005-VA-0007, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R03-OAR-2005-VA-0007. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://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 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://www.docket.epa.gov/rmepub/>, although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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

**SUPPLEMENTARY INFORMATION:** On May 2, 2005, Virginia Department of

Environmental Quality (VADEQ) formally submitted a redesignation request for the Fredericksburg Nonattainment Area to attainment of the eight-hour NAAQS for ozone. On May 4, 2005, Virginia submitted a maintenance plan for the Fredericksburg Nonattainment Area as a SIP revision, to assure continued attainment over the next 10 years.

### I. Background

The Fredericksburg Nonattainment Area was designated as moderate eight-hour ozone nonattainment status on April 30, 2004 (69 FR 23857), based on its exceedance of the health-based standards for ozone. Under section 107(d)(3)(E) of the CAA, the following five criteria must be met for an ozone nonattainment area to be redesignated to attainment:

1. The area must meet the ozone NAAQS.
2. The area must have a fully approved SIP under section 110(k).
3. The area must show improvement in air quality due to permanent and enforceable reductions in emissions.
4. The area must meet all requirements applicable under section 110 and part D.
5. The area must have a fully approved maintenance plan under section 175A of the CAA.

### II. Summary of Virginia's Submittal

The following is a description of how the Commonwealth of Virginia's May 2, 2005 and May 4, 2005 submittals satisfy the five requirements of section 107(d)(3)(E). EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

#### A. Attainment of the Ozone NAAQS in the Fredericksburg Nonattainment Area

Section 181(b)(2)(A) of the CAA states that the EPA Administrator shall determine whether an area has achieved the ozone standard based on the design value of that area. The design value for an area is based on the three-year average (2002-2004) of the monitored annual fourth-highest daily maximum eight-hour average ozone concentration. In the Fredericksburg Nonattainment Area, there is one ozone monitor, located in Stafford County, that measures air quality with respect to ozone. According to the Code of Federal

Regulations, 40 CFR part 50, Appendix I, which establishes the procedure for interpreting ozone monitoring data, the Fredericksburg Nonattainment Area attained the ozone standard for the most recent three-year period, 2002-2004. The data collected at the Stafford County monitor satisfies the CA requirement that the three-year average of the annual fourth-highest daily maximum eight-hour average ozone concentration is less than or equal to 0.08 parts per million (ppm). The Commonwealth of Virginia's request for redesignation for the Fredericksburg Nonattainment Area indicates that the data was quality assured in accordance with 40 CFR part 58. The VADEQ uses the Aerometric Information Retrieval System (AIRS) as the permanent database to maintain its data and quality assures the data transfers and content for accuracy.

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

Stafford County is the only locality of the three in the Fredericksburg Nonattainment Area that was subject to Federal ozone requirements for an one-hour ozone nonattainment area. Stafford County was a part of the Northern Virginia Ozone Nonattainment Area, therefore, subject to SIP requirements for serious (section 182(c) of the CAA) and severe (section 182(d) of the CAA) ozone nonattainment areas. Certain control measures developed to meet the severe nonattainment area requirements will continue to apply in Stafford County.

Sections 182(a) through 182(d) of the CAA establish specific requirements for nonattainment areas and for areas located in the Ozone Transport Region (OTR). As mentioned, Stafford County is the only jurisdiction in the Fredericksburg Nonattainment Area that was subject to these provisions. Pursuant to section 110 of the CAA, EPA has previously approved as part of the Commonwealth of Virginia's SIP regulations and other measures that fully satisfy the requirements of section 182(a) through 182(d), as described below:

1. Section 182(d) Requirements for Areas Designated Severe and Above
  - a. Requirements for annual emissions statements from industries;
  - b. Preconstruction review (permit) program for new industry and expansions;
  - c. General conformity requirements;
  - d. Case-by-case control technology determinations for all major volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) sources not covered by an

EPA control technology guideline (CTG);

- e. Requirement for vapor recovery controls for emissions from filling vehicles with gasoline (Stage II);
- f. Enhanced monitoring (source emissions) program: photochemical assessment monitoring stations (PAMS);
- g. National Low Emissions Vehicle (NLEV);
- h. Oxygenated fuels program;
- i. Requirement for controls for all major (25 tons per year (tpy)) VOC sources;
- j. Requirement for controls for all major (25 tpy) NO<sub>x</sub> sources; and,
- k. Requirement for major sources to pay a penalty fee.

## 2. Section 184(b) (Areas Located in OTR)

- a. Regulations requiring reasonably available control technology (RACT) with respect to all sources of VOC covered by a CTG;
- b. VOC controls on landfills;
- c. Corrections to existing regulatory program requiring controls for certain source types;
- d. The inclusion of Stafford County in the enhanced inspection and maintenance (I/M) program;
- e. VOC controls (Ozone Transport Commission rules); and,
- f. NSR for the OTR.

## 3. Additional Plan Submittals

In addition to the above, the Commonwealth's SIP contains the following previously approved elements that support Virginia's attainment plan for the Fredericksburg Nonattainment Area.

- a. Comprehensive inventory of emissions;
- b. Proposed SIP revision to achieve a 15 percent reduction in VOC emissions for the Washington DC–MD–VA nonattainment area;
- c. Final SIP revision to achieve a 15 percent reduction in VOC emissions for the Washington DC–MD–VA nonattainment area;
- d. Final SIP revision, Phase I attainment plan, and revision to the SIP to achieve a 15 percent reduction in VOC emissions and revision to the 1990 base year emissions inventory for the Washington DC–MD–VA nonattainment area;
- e. Final SIP revision to the SIP to achieve a 15 percent reduction in VOC emissions for the Washington DC–MD–VA nonattainment area;
- f. Revised SIP revision, Phase I attainment plan for the Washington DC–MD–VA nonattainment area/appendices; and,
- g. Open burning regulations.

## C. Demonstration of Permanent and Enforceable Improvement

Between 2002 and 2004, VOC emissions were reduced by 1.5 tons per day (tpd) NO<sub>x</sub> emissions were reduced by 2.7 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in the Fredericksburg Nonattainment Area:

1. Programs Current by in Effect
  - a. NLEV;
  - b. Open burning restrictions for Stafford County only;
  - c. CTG RACT requirements for Stafford County only;
  - d. Non-CTG RACT requirements for Stafford County only;
  - e. Stage I and Stage II vapor recovery requirements for Stafford County only;
  - f. Reformulated gasoline requirements for Stafford County only;
  - g. Area source VOC regulations concerning portable fuel containers; mobile vehicle refinishing; architectural and industrial maintenance coatings; solvent cleaning; and, consumer product for Stafford County only;
  - h. Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and,
  - i. Low-sulfur gasoline.

## 2. Other Mobile Programs

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

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

## 3. Additional Air Quality Improvements

Lastly, to further improve air quality and to provide room for industrial and population growth while maintaining emissions in the area to less than 2004 levels, the Commonwealth of Virginia has initiated rulemaking to implement the following programs.

- a. Implement the Stage I requirements in Fredericksburg and Spotsylvania;
- b. Implement the open burning restriction requirements in Fredericksburg and Spotsylvania; and,
- c. Implement existing source CTG RACT requirements in Fredericksburg and Spotsylvania.

In addition to the permanent and enforceable measures, the NO<sub>x</sub> Budget Training Program regulations took effect in 2003. There are currently no subject sources located in the Fredericksburg area, but this area can reasonably expect

to indirectly benefit in terms of improved regional air quality due to this program. Additionally, the Clean Air Interstate Rule (CAIR), final EPA approval May 12, 2005 (70 FR 25161), should have positive impacts on the Commonwealth's air quality by the years 2009 and 2015.

## D. Section 110 and Part D Requirements

Stafford County is the only locality in the Fredericksburg Nonattainment Area that has been subject to Federal ozone requirements. Prior to the eight-hour nonattainment area designations, Stafford County was a part of the Northern Virginia Ozone Nonattainment Area and thus subject to SIP requirements for serious and severe ozone nonattainment areas. Therefore, Stafford County is the only area to be subject to section 110(a)(2) and Part D requirements that were applicable prior to the redesignation submittal. There are multiple similarities within these requirements.

### 1. Section 110 Requirements

Section 110(a)(2) of the CAA contains general requirements for nonattainment plans. Most of the provisions of this section are the same as those contained in the pre-amended CAA. The Commonwealth of Virginia has already fulfilled all pre-amendment CAA requirements pertaining to Stafford County, which is the only county in the Fredericksburg Nonattainment Area that is affected by these requirements.

### 2. Part D Requirements

Virginia's existing SIP satisfies the requirements of Part D of the CAA. Key elements of the Part D submittals are contained in Subpart 1 (Nonattainment Areas in General) and Subpart 2 (Additional Provisions for Ozone Nonattainment Areas).

a. *Subpart 1.* Section 172(c), Nonattainment Plan Provisions, has been met by a previous SIP revision, and its requirements are identical to those found in section 110(a)(2) and Part D. Section 172(c) requirements are as follows:

1. Provisions for implementation of all reasonably available control measures;
2. Demonstration of reasonable further progress;
3. Comprehensive inventory of emissions;
4. Identification and quantification of new source emissions;
5. Permits for new and modified sources;
6. Enforceable emissions limitations;
7. Contingency measures;
8. Section 173(a) contains requirements for issuing permits,

including offsets and the application of the lowest achievable emission rate (LAER); and

9. Section 176 requires the state to develop transportation and general conformity procedures to be submitted as a SIP revision.

b. *Subpart 2.* The specific requirements of section 182(a) through (d) have been met by the Commonwealth's SIP. These sections require that specific control measures and other requirements be adopted and implemented. These requirements were addressed above in section B. In addition to sections 182(a) thru 182(d) requirements, Virginia had to demonstrate that it would achieve a VOC emission reduction of 15 percent. Finally, the SIP had to include an attainment demonstration supported by photochemical modeling.

3. Conformity Process

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 requirements 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"). Section 176 further provides that state conformity revisions must be consistent with the Federal conformity regulations that the CAA required EPA to promulgate. Although Federal conformity rule changes are still pending, EPA believes that it is reasonable to interpret conformity requirements as not applying for purposes of evaluating a redesignation request under section 107(d) so that EPA may approve an ozone redesignation request

notwithstanding the lack of a fully approved conformity SIP. The rationale for this is based on a combination of two factors. First, Federal conformity rules require performance of conformity analysis even in the absence of Federally approved states rules. Second, conformity provisions of the CAA continue to apply after redesignation because areas are subject to a maintenance plan which requires compliance with mobile budgets. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request.

Virginia submitted procedures to determine if systems-level highway plans and other Federally-financed projects are in conformity with air quality plans ("transportation conformity") to EPA on January 20, 1997 and were deemed complete by operation. The EPA has not yet taken action on this submittal. In the meantime, EPA is in the process of incorporating these changes to the state regulation. Pending EPA approval of the state regulation, Virginia will continue to make transportation conformity determinations under the provision of 40 CFR part 93, subpart A.

The Fredericksburg Area Metropolitan Planning Organization (FAMPO) along with the Virginia Department of Motor Vehicles (DMV) provided 2002 mobile source input parameters for the development of all future year inventories. As part of the SIP process, the recently submitted maintenance plan will establish an emission budget to be used for transportation conformity purposes. This mobile source emissions budget represents the level of mobile emissions that can be emitted in the

area while supporting the air quality plan.

E. *Maintenance Plan for the Fredericksburg Nonattainment Area*

1. Maintenance Plan Requirements

A maintenance plan is a SIP revision that provides maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. A maintenance plan consists of the following requirements as outlined in section 175A of the CAA: (a) An attainment inventory; (b) a maintenance demonstration; (c) a monitoring network; (d) verification of continued attainment; and, (e) a contingency 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 2004. That year establishes a reasonable year within the three-year block of 2002–2004 as a baseline and accounts for reductions attributed to implementation of the CAA requirements to date. This inventory is based on actual emission for a "typical summer day" and consist of a list of sources and their associated emissions.

b. *Maintenance Demonstration.* VADEQ's calculations of future emissions of VOC and NO<sub>x</sub> from stationary and mobile sources demonstrate that future emissions will not exceed the level of Virginia's attainment inventory for a 10-year period following redesignation (see Tables 1 and 2). Future emissions levels must continue to remain at or below attainment levels for a period of 10 years after EPA redesignates the area from nonattainment to attainment. The VADEQ's planning horizon for the maintenance plan is 2015.

TABLE 1.—TOTAL VOC EMISSIONS FOR 2004–2015

Source category	2004 NO <sub>x</sub> emissions (tpd)	2015 NO <sub>x</sub> emissions (tpd)
Mobile <sup>1</sup> .....	11.298	5.734
Nonroad .....	3.304	2.231
Area <sup>2</sup> .....	14.070	15.303
Point .....	0.602	0.7824
Total .....	29.274	24.0504

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

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

<sup>3</sup> Includes selected local controls (open burning).

TABLE 2.—TOTAL NO<sub>x</sub> EMISSIONS FOR 2004–2015

Source category	2004 NO <sub>x</sub> emissions (tpd)	2015 NO <sub>x</sub> emissions (tpd)
Mobile <sup>1</sup> .....	19.742	7.326
Nonroad .....	3.601	2.195
Area <sup>3</sup> .....	3.465	4.742
Point .....	0.179	0.0258
<b>Total</b> .....	<b>26.987</b>	<b>14.2888</b>

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

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

<sup>3</sup> Includes selected local controls (open burning).

*c. Monitoring Network.* VADEQ will continue to operate its current air quality monitor in accordance with 40 CFR 58. Should measured mobile source parameters change significantly over time, the Commonwealth will perform a saturation monitoring study to determine the need for, and location of, additional permanent monitors.

*d. Verification of Continued Attainment.* The Commonwealth of Virginia has the legal authority to implement and enforce specified measures necessary to attain and maintain the NAAQS. Key regulatory requirements that VADEQ will keep in place to maintain attainment include expanding CTG RACT, Stage I controls, and open burning restrictions to the City of Fredericksburg and Spotsylvania County.

Virginia 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) 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 State will also develop and submit to EPA comprehensive tracking inventories every three years during the maintenance plan period, beginning in 2005. For purpose of performing this tracking function for point sources, the Commonwealth will retain the annual emission statement requirements for the maintenance area (9 VAC 5–20–160). Virginia will report the results of this tracking program to EPA every three years.

*e. Contingency Measures.* According to the CAA, states that wish to

redesignate nonattainment areas to attainment must include in their submittal to EPA contingency measures which will automatically take effect should violations of the NAAQS occur in the former nonattainment area. Contingency plan measures to be considered for implementation of Fredericksburg Nonattainment Area for VOC and NO<sub>x</sub> emissions above the regional emissions budget or two recorded ozone exceedances include the preparation of a complete VOC and NO<sub>x</sub> emission inventory (for exceeding the regional emissions budget scenario only) and the implementation of one or more regulations concerning area source VOC controls. These control measures consist of 9 VAC 5 Chapter 40, Article 42 Emission Standards for Portable Fuel Container Spillage; 9 VAC 5 Chapter 40, Article 48 Emission Standards for Mobile Equipment Repair and Refinishing Operations; 9 VAC 5 Chapter 40, Article 49 Emission Standards for Architectural and Industrial Maintenance Coatings; and 9 VAC 5 Chapter 40, Article 50 Emission Standards for Consumer Products.

In the event that a ozone violation occurs at the Stafford County monitor, the remaining area source VOC controls will be implemented. In the event that a violation of the ozone standard occurs following the implementation of VOC controls, and in any subsequent ozone season, NO<sub>x</sub> and VOC RACT will be implemented for sources emitting above 100 tpy that are located in Spotsylvania and Fredericksburg.

Regardless of the number of exceedances or violations noted, the regulations controlling VOC emissions from area sources (9 VAC 5 Chapter 40, Article 42; 9 VAC 5 Chapter 40, Article 48; 9 VAC 5 Chapter 40, Article 49; and 9 VAC 5 Chapter 40, Article 50) will be expanded to Fredericksburg and Spotsylvania County such that these regulations will take effect in 2008, or as expeditiously as possible thereafter in order to provide additional air quality benefits.

## 2. Requirement for Continued Maintenance

Section 175A(b) of the CAA will also require The Commonwealth of Virginia to submit a revision to the SIP eight years after the original redesignation request is approved to provide for maintenance of the NAAQS in the Fredericksburg Nonattainment Area for an additional 10 years following the first 10-year period.

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

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

environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. \* \* \*" The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extend 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, 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.

#### IV. Proposed Action

The EPA is proposing to approve the Commonwealth of Virginia's May 2, 2005 request for the Fredericksburg ozone nonattainment area to attainment of the eight-hour NAAQS for ozone because the requirements for approval have been satisfied. EPA is also proposing to approve the associated maintenance plan for this area as required under 175A of the CAA, as a revision to the Virginia SIP, which was submitted on May 4, 2005. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. 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 (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 approve a state rule

implementing a Federal standard, 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. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule proposing to approve the redesignation of the Fredericksburg Ozone Nonattainment Area to attainment and to approve the associated 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: September 1, 2005.

**Richard J. Kampf,**

*Acting Regional Administrator, Region III.*

[FR Doc. 05-17928 Filed 9-9-05; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 372**

[TRI-2005-0004; FRL-7532-7]

RIN 2025-AA17

**Addition of Diisononyl Phthalate Category; Community Right-to-Know Toxic Chemical Release Reporting; Notice of Data Availability; Extension of Comment Period**

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

**ACTION:** Proposed rule, notice of data availability, extension of comment period.

**SUMMARY:** On June 14, 2005, EPA issued a notice of data availability concerning a proposed rule to add a diisononyl phthalate (DINP) category to the list of toxic chemicals subject to the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). The notice of data availability made available for public comment a revised hazard assessment for DINP. The purpose of this action is to inform interested parties that, in response to a request for an extension, EPA is extending the comment period by 30 days until October 12, 2005. The comment period for the notice of data availability was previously scheduled to close on September 12, 2005.

**DATES:** Comments must be received on or before October 12, 2005.

**ADDRESSES:** Submit your comments, identified by Docket ID No. TRI-2005-0004, 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://www.epa.gov/edocket>. EDOCKET, 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: [oei.docket@epa.gov](mailto:oei.docket@epa.gov).
- Mail: Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. TRI-2005-0004.
- Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004, telephone: 202-566-1744, Attention Docket ID No. TRI-2005-0004. 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. TRI-2005-0004. 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://www.epa.gov/edocket>, 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 EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the federal [regulations.gov](http://www.regulations.gov) Web sites are "anonymous access" systems, 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 EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your

comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the EDOCKET *index at: <http://www.epa.gov/edocket>*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744, and the telephone number for the OEI Docket is 202-566-1752.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-566-0743; fax number: 202-566-0741; e-mail: [bushman.daniel@epamail.epa.gov](mailto:bushman.daniel@epamail.epa.gov), for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1-800-424-9346, in Virginia and Alaska: 703-412-9810 or Toll free TDD: 1-800-553-7672.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Notice Apply to Me?*

You may be potentially affected by this notice if you manufacture, process, or otherwise use DINP. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry .....	SIC major group codes 10 (except 1011, 1081, and 1094); 12 (except 1241); or 20 through 39; or industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C., section 6921 <i>et seq.</i> ); or 5169; or 5171; or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).
Federal Government .....	Federal facilities.