

or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting two hours that will prohibit entry within 100 yards of boom, vessels and equipment being used by personnel to conduct a boom deployment exercise. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T11–132 to read as follows:

§ 165.T11–132 Safety Zone; Mission Bay, San Diego, CA.

(a) *Location.* The following area is a safety zone: All waters from surface to bottom encompassing a 100-yard radius surrounding the Sensitive Site Strategy Evaluation Program (SSSEP) boom deployment exercise, located at the entrance to Quivira Basin inlet in Mission Bay, CA.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for the safety zone.

(d) *Enforcement period.* This section will be enforced from 9:30 a.m. to 11:30 a.m. on October 25, 2023.

Dated: October 10, 2023.

J.W. Spittler,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2023–22883 Filed 10–16–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0089; FRL–10213–02–R3]

Air Plan Approval; Virginia; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Hampton Roads Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (Commonwealth or Virginia). This revision pertains to the Commonwealth's plan, submitted by the Virginia Department of Environmental Quality (VADEQ), for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) (referred to as the “1997 ozone NAAQS”) in the Norfolk-Virginia Beach-Newport News (Hampton Roads), VA Area (Hampton Roads Area). EPA is approving this revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 16, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2023–0089. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Om P. Devkota, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2172. Mr. Devkota can also be reached via electronic mail at devkota.om@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 22, 2023 (88 FR 57020), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of Virginia's plan for maintaining the 1997 ozone NAAQS in the Hampton Roads Area through December 31, 2032, in accordance with CAA section 175A. The formal SIP revision was submitted by Virginia on September 9, 2022.

II. Summary of SIP Revision and EPA Analysis

On June 1, 2007 (72 FR 30490), EPA approved a redesignation request (and maintenance plan) from VADEQ for the Hampton Roads Area for the 1997 ozone NAAQS. In accordance with CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District v. EPA*,¹ the District of Columbia (D.C.) Circuit held that this requirement cannot be waived for areas, like the Hampton Roads Area, that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) an attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.² VADEQ's September 9, 2022 submittal fulfills Virginia's obligation to submit a second maintenance plan and addresses each of the five necessary elements, as explained in the NPRM.

As discussed in the August 22, 2023 (88 FR 57020) NPRM, EPA allows the submittal of a limited maintenance plan (LMP) to meet the statutory requirement that the area will maintain for the statutory period. Qualifying areas may meet the maintenance demonstration by

showing that the area's design value³ is well below the NAAQS and that the historical stability of the area's air quality levels indicates that the area is unlikely to violate the NAAQS in the future. EPA evaluated VADEQ's September 9, 2022 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Hampton Roads Area as a revision to the Virginia SIP.

Other specific requirements of Virginia's September 9, 2022 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. EPA received two supportive comments for this action, which can be found at Docket ID Number EPA-R03-OAR-2023-0089.

III. Final Action

EPA is approving VADEQ's second maintenance plan for the Hampton Roads Area for the 1997 ozone NAAQS as a revision to the Virginia SIP.

IV. 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 that: (1) are generated or developed

before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) 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 CAA, 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

¹ 882 F.3d 1138 (D.C. Cir. 2018).

² "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

³ The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area. www.epa.gov/air-trends/air-quality-design-values.

CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA;

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian

country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

VADEQ did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving VADEQ's second maintenance plan for the Hampton Roads Area for the 1997 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

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

Subpart VV—Virginia

- 2. In § 52.2420, the table in paragraph (e)(1) is amended by adding an entry for "1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Hampton Roads Area" at the end of the table to read as follows:

§ 52.2420 Identification of plan.

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Hampton Roads Area.	Hampton Roads Area (Norfolk-Virginia Beach-Newport News area).	09/09/2022	10/17/2023, [INSERT Federal Register CITATION].	The Hampton Roads Area consists of the counties of Gloucester, Isle of Wight, James City, and York, and the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

* * * * *
 [FR Doc. 2023-22741 Filed 10-16-23; 8:45 am]
 BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23-244; RM-11955; DA 23-937; FR ID 178083]

Television Broadcasting Services Knoxville, Tennessee

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission’s Media Bureau, Video Division (Bureau) issued a notice of proposed rulemaking in response to a Petition for Rulemaking filed by Tennessee TV, LLC (Petitioner), the licensee of television station WKNX-TV (WKNX-TV or Station), channel 7, Knoxville, Tennessee (Knoxville). The Petitioner has requested the substitution of UHF channel 21 for VHF channel 7 in the Table of TV Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 21 for channel 7 at Knoxville.

DATES: Effective October 17, 2023.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418-1647 or Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: The proposed rule was published at 88 FR 48784 on July 28, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 21. No other comments were filed.

The Bureau believes the public interest would be served by substituting channel 21 for channel 7 at Knoxville, Tennessee. The Commission has recognized that VHF channels pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be

receivable at relatively far distances and large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on high VHF channels. In its Supplement, the Petitioner provided a technical analysis showing that while 50,322 persons located along the eastern, southern, and western fringes of the Station’s authorized channel 7 NLSC would not be within the proposed channel 21 noise-limited service contour, the entire loss area was within the NLSC of at least five other full power or Class A television stations, including four other full power television stations licensed to Knoxville or a community in the Knoxville Designated Market Area. Although the Petitioner’s proposal would result in a number of persons no longer being within WKNX-TV’s NLSC when the station moves to channel 21, all of those persons will continue to be well served by at least five other full power or Class A stations, and we find that the overall benefits of the proposed channel change by resolving reception issues outweigh any possible harm to the public interest. This is a synopsis of the Commission’s *Report and Order*, MB Docket No. 23-244; RM-11955; DA 23-937, adopted October 6, 2023, and released October 6, 2023. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.
 Federal Communications Commission.
Thomas Horan,
Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in paragraph (j), amend the Table of TV Allotments, under Tennessee, by revising the entry for Knoxville to read as follows:

§ 73.622 Table of TV allotments.

Community	Channel No.
Tennessee	
Knoxville	10, 15, 21, 26, *29, 34

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