

to be carried out using an enclosed system for fully assembled medical devices. Individual components can only be coated if an approval is granted based on technical and economic justification. Solvents used in steel cannula coating must be chilled to 50 °F or less using a solvent chiller system to minimize VOC emissions. The regulations provide flexibility for companies to achieve an equivalent level of control through an alternative method.

At this time, there is only one affected source located in Cecil County, Maryland. The company manufactures syringes and a range of cardiovascular products and devices such as catheters, filters, pumps and heat exchangers. It is estimated that as a result of this regulation, approximately 1.2 to 1.7 tons of VOC emissions per year will be reduced.

### III. Proposed Action

EPA has reviewed the material submitted by Maryland on May 31, 2006 and July 5, 2006. EPA is proposing to approve the Maryland SIP revision for RACT requirements for the manufacturing of hypodermic products, syringes, catheters, blood handling and other medical devices. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IV. 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 requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it 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 proposed rule for RACT requirements for the manufacturing of hypodermic products, syringes, catheters, blood handling and other medical devices 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 28, 2006.

**William T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. E6–16653 Filed 10–6–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R03–OAR–2006–0353; FRL–8229–5]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Redesignation of the Kent and Queen Anne’s 8-Hour Ozone Nonattainment Area to Attainment and Approval of the 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 for the Kent and Queen Anne’s, MD (herein referred to as the “Kent and Queen Anne’s area”) area from nonattainment to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Maryland Department of the Environment (MDE) is requesting that Kent and Queen Anne’s County, Maryland (herein known as “Kent and Queen Anne’s area”) be redesignated as attainment for the 8-hour ozone NAAQS. The Kent and Queen Anne’s 8-hour ozone nonattainment area is comprised of two counties (Kent and Queen Anne’s Counties, Maryland). EPA is proposing to approve the ozone redesignation request for the Kent and Queen Anne’s area. In conjunction with its redesignation request, the MDE submitted a SIP revision consisting of a maintenance plan for Kent and Queen Anne’s that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years. EPA is proposing to make a determination that Kent and Queen Anne’s has attained the 8-hour ozone NAAQS based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2003–2005. EPA’s proposed approval of the 8-hour ozone redesignation request is based on its determination that Kent and Queen Anne’s 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 Kent and Queen Anne's maintenance plan 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 Maryland SIP in accordance with the requirements of the CAA.

**DATES:** Written comments must be received on or before November 9, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0353 by one of the following methods:

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

*B. E-mail:* [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).

*C. Mail:* EPA-R03-OAR-2006-0353, Makeba Morris, Chief, Air Quality Planning Branch,

D. Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2006-0353. 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.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of Environment, 1800 Washington Boulevard, Maryland, 21230.

**FOR FURTHER INFORMATION CONTACT:** Helene Drago, (215) 814-2156, or by e-mail at [drago.helene@epa.gov](mailto:drago.helene@epa.gov).

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

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#### I. What Actions are EPA Proposing to Take?

On May 2 and 19, 2006, MDE formally submitted a request to redesignate Kent and Queen Anne's from nonattainment to attainment of the 8-hour NAAQS for ozone. On May 2, 2006, Maryland submitted a maintenance plan for Kent and Queen Anne's as a SIP revision, to ensure continued attainment over the next 12 years. Kent and Queen Anne's is currently designated as a marginal 8-hour ozone nonattainment area. EPA is

proposing to determine that Kent and Queen Anne's 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 Kent and Queen Anne's from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for Kent and Queen Anne's, such approval being one of the CAA requirements for approval of a redesignation request. The maintenance plan is designed to ensure continued attainment throughout the Kent and Queen Anne's area for the next 12 years. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Kent and Queen Anne's maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) for transportation conformity purposes. These MVEBs are State MVEBs for the Kent and Queen Anne's 8-hour ozone area. Concurrently, the State is requesting that EPA approve the maintenance plan as meeting the requirements of CAA 175A(b) with respect to the 1-hour ozone maintenance plan update.

#### II. What is the Background for These Proposed Actions?

##### A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO<sub>x</sub> and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Kent and Queen Anne's area was designated as marginal 8-hour ozone nonattainment status in a **Federal Register** notice signed on September 15, 2004 and published on September 22, 2004 (69 FR 56697). On October 21, 2004 (69 FR 61766), EPA approved a redesignation request and maintenance plan for Kent and Queen Anne's for the 1-hour ozone NAAQS. On June 15, 2005

(69 FR 23951, 23996), the 1-hour ozone NAAQS was revoked in the Kent and Queen Anne's area (as well as most other areas of the country). See 40 CFR 50.9(b); 69 FR 23996 (April 30, 2004); and see 70 FR 44470 (August 3, 2005).

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 Kent and Queen Anne's area was classified a marginal 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and is subject to the requirements of subpart 2.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). See 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that the Kent and Queen Anne's area has a design value of 0.082 ppm for the 3-year period of 2003–2005, using complete, quality assured data. Therefore, the ambient ozone data for the Kent and Queen Anne's area indicates no violations of the 8-hour ozone standard. Final monitoring data

for 2005 indicates continued attainment of the 8-hour ozone standard in the Kent and Queen Anne's area.

#### *B. The Kent and Queen Anne's Area*

The Kent and Queen Anne's area consists of Kent and Queen Anne's Counties, Maryland. Prior to its designation as an 8-hour ozone nonattainment area, the Kent and Queen Anne's area was a maintenance area for the 1-hour ozone nonattainment NAAQS.

On May 2 and 19, 2006, the MDE requested that the Kent and Queen Anne's area be redesignated to attainment for the 8-hour ozone standard. The redesignation request referenced 3 years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in Kent and Queen Anne's. 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 May 2 and 19, 2006, the MDE requested redesignation of the Kent and Queen Anne's area to attainment for the 8-hour ozone standard. On May 2, 2006, the MDE submitted a maintenance plan for the Kent and Queen Anne's area as a SIP revision, to assure continued attainment of the 8-hour ozone NAAQS over the next 12 years, until 2018. Concurrently, Maryland is requesting that EPA approve a revision to the 1-hour ozone maintenance plan as required under CAA 175A(b). EPA is proposing to approve the maintenance plan to fulfill the requirement of section 175A(b) for submission of a maintenance plan update eight years after Kent and Queen Anne's was redesignated to attainment of the 1-hour ozone NAAQS. EPA believes that such an update must ensure that the maintenance plan in the SIP provides maintenance of the NAAQS for a period of 20 years after an area is initially redesignated to attainment. EPA can propose approval because the maintenance plan, which demonstrates maintenance of the 8-hour ozone NAAQS through 2018, also demonstrates maintenance of the 1-hour ozone NAAQS through 2018, even though the latter standard is no longer in effect. Kent and Queen Anne's was redesignated to attainment of the 1-hour ozone NAAQS on October 21, 2004 (69 FR 61766), and, the initial 1-hour ozone maintenance plan provided for maintenance through the end of the maintenance period. Section 51.905(e) of the "Final Rule To Implement the 8-Hour Requirements—Phase 1" April 30, 2004 (69 FR 23999) specifies the conditions that must be satisfied before EPA may approve a modification to a 1-hour maintenance plan which: (1) Removes the obligation to submit a maintenance plan for the 1-hour ozone NAAQS eight years after approval of the initial 1-hour maintenance plan and/or (2) removes the obligation to implement contingency measures upon a violation of the 1-hour NAAQS. EPA believes that section 51.905(e) of the final rule allows a State to make either one or both of these modifications to a 1-hour maintenance plan SIP once EPA approves a maintenance plan for the 8-hour NAAQS. The maintenance plan will not trigger the contingency plan upon a violation of the 1-hour ozone NAAQS, but upon a violation of the 8-hour ozone NAAQS. EPA believes that the 8-hour standard is now the proper standard which should trigger the contingency plan now that the 1-hour

NAAQS has been revoked and now that approval of the maintenance plan would allow the State to remove a violation of the 1-hour NAAQS obligation from the SIP. EPA has determined that the Kent and Queen Anne's 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 Kent and Queen Anne's from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Maryland SIP a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in Kent and Queen Anne's for the next 12 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO<sub>x</sub> and VOC for transportation conformity purposes for the years 2009 and 2018. These MVEBs are displayed in the following table:

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

Year	NO <sub>x</sub>	VOC
2009 .....	5.11	2.72
2018 .....	2.38	1.62

#### VI. What is EPA's Analysis of the State's Request?

EPA is proposing to determine that the Kent and Queen Anne's 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 MDE's May 2 and 19, 2006 submittals satisfy the requirements of section 107(d)(3)(E) of the CAA.

##### A. The Kent and Queen Anne's Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Kent and Queen Anne's area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding

convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality Subsystem (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Kent and Queen Anne's area there is one ozone monitor, located in Kent County, that measures air quality with respect to ozone. As part of its redesignation request, Maryland referenced ozone monitoring data for the years 2003–2005 for the Kent and Queen Anne's area. This data has been quality assured and is recorded in AIRS. The fourth high 8-hour daily maximum concentrations, along with the three-year averages, are summarized in Table 2.

TABLE 2.—KENT AND QUEEN ANNE'S COUNTIES NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; MILLINGTON MONITOR

Year	Annual 4th high reading (ppm)
2003 .....	0.086
2004 .....	0.078
2005 .....	0.084

The average for the 3-year period 2003 through 2005 is 0.082 ppm.

The air quality data for 2003–2005 show that the entire Kent and Queen Anne's area has attained the standard with a design value of 0.082 ppm. The data collected at the Kent and Queen Anne's area monitors satisfy the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The MDE's request for redesignation for Kent and Queen Anne's indicates that the data is complete and was quality assured in accordance with 40 CFR part 58. The MDE uses AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, MDE has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data referenced by Maryland and data taken from AQS indicates that the Kent and Queen Anne's area has attained the 8-hour ozone NAAQS.

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

EPA has determined that the Kent and Queen Anne's area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the Kent and Queen Anne's area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that came due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

**1. Section 110 General SIP Requirements**

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and

operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants in accordance with the NO<sub>x</sub> SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO<sub>x</sub> SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State.

Thus, we do not believe that these requirements 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. Maryland will still be subject to these requirements after the Kent and Queen Anne's 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 24826 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida, final rulemaking 60 FR 62748 (December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation 65 FR 37890 (June 19, 2000), and in the Pittsburgh redesignation 66 FR 53099 (October 19, 2001). Similarly, with respect to the NO<sub>x</sub> SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO<sub>x</sub> SIP Call rules are not "an 'applicable requirement' for purposes of section 110(l) because the NO<sub>x</sub> rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS." 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as 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 Maryland SIP satisfy all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Maryland 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 Kent and Queen Anne's area was designated a marginal nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. As discussed previously, there are no outstanding Part D submittals under the 1-hour standard 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 Kent and Queen Anne's area is classified as a subpart 2 marginal nonattainment area

With respect to the 8-hour standard, EPA proposes to determine that the Maryland 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 State submitted a complete redesignation request for Kent and Queen Anne's 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 Kent and Queen Anne's 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 interpreted the section 184 Ozone Transport Region requirements, including the NSR

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

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." Maryland has demonstrated that the area will be able to maintain the standard without Part D NSR in effect in Kent and Queen Anne's, and therefore, Maryland need not have a fully approved Part D NSR program prior to approval of the redesignation request. Maryland's SIP-approved PSD program will become effective in Kent and Queen Anne's upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

### 3. Kent and Queen Anne's Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the Maryland SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo,

p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25425 (May 12, 2003) and citations therein. The Kent and Queen Anne's area was a 1-hour maintenance area at the time of its designation as a marginal 8-hour ozone nonattainment area on September 22, 2004. Because Kent and Queen Anne's was a 1-hour maintenance area, all previous Part D SIP submittal requirements were fulfilled at the time the area was redesignated to attainment of the 1-hour ozone NAAQS (69 FR 61766, October 21, 2004) or have been fulfilled with the submittal of the 8-hour maintenance plan for the area. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of Kent and Queen Anne's, 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 Kent and Queen Anne's area, and therefore they need not be approved into the SIP prior to redesignation.

### 4. The Air Quality Improvement in the Kent and Queen Anne's 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 State has demonstrated that the observed air quality improvement in the Kent and Queen Anne's 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 in Kent and Queen Anne's are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO<sub>x</sub> EMISSIONS FOR 2002 AND 2005 (TPD)

Year	Point	Area *	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002 .....	0.12	5.12	11.0	4.18	20.4
Year 2005 .....	0.12	5.31	10.0	3.15	18.6

TABLE 3.—TOTAL VOC AND NO<sub>x</sub> EMISSIONS FOR 2002 AND 2005 (TPD)—Continued

Year	Point	Area *	Nonroad	Mobile	Total
Diff. (02–05) .....	0.0	+0.19	– 1.00	– 1.03	– 1.84
Nitrogen Oxides (NO <sub>x</sub> )					
Year 2002 .....	0.07	0.23	3.74	7.96	12.0
Year 2005 .....	0.07	0.25	3.77	6.57	10.7
Diff. (02–05) .....	0.0	+0.02	+0.03	– 1.39	– 1.34

Between 2002 and 2005, VOC emissions were reduced by 1.84 tpd, and NO<sub>x</sub> emissions were reduced by 1.34 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in the Kent and Queen Anne's area.

Nearly all of the reductions in VOC are attributable to mobile onroad and nonroad source emission controls and all of the reductions in NO<sub>x</sub> are attributable to the implementation of mobile source programs. Maryland noted a major portion of the decrease in ozone precursors was due to the Federal Motor Vehicle Control Program. Over a period of time, older, poorer performing on-road vehicles have been gradually replaced with newer vehicles that must meet increasingly stringent tailpipe standards.

Other regulations, such as the non-road diesel, 69 FR 38958 (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 (February 10, 2000), are also expected to greatly reduce emissions throughout the country and thereby reduce emissions impacting the Kent and Queen Anne's 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<sub>x</sub> emissions by about 74 percent nationally. 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.

There is very little major point source activity in the Kent and Queen Anne's Counties area and thus point source emissions are very low. Growth in point sources will be controlled through the offset requirements under the PSD permitting program. Any major source that wishes to locate in Kent or Queen Anne's Counties will need to procure emissions offsets at a ratio of 1.15 to 1 for NO<sub>x</sub> and VOC. In addition to emission reductions in the Kent and Queen Anne's Counties, background

concentrations of ozone in the area will decrease as a result of the many ozone precursor reduction strategies implemented in the Baltimore and Washington DC severe 8-hour ozone nonattainment areas. Long range transport of NO<sub>x</sub> will also be reduced the NO<sub>x</sub> SIP Call Rule and Clean Air Interstate Rule.

5. Kent and Queen Anne's has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Kent and Queen Anne's area to attainment status, Maryland submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in Kent and Queen Anne's for at least 12 years after redesignation. Maryland is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A(b) and replace the 1-hour ozone maintenance plan update requirement.

Under 40 CFR 51.905(e), the EPA may approve a SIP revision requesting the removal of the obligation to implement contingency measures upon a violation of the 1-hour ozone NAAQS when the State submits and EPA approves an attainment demonstration for the 8-hour ozone NAAQS for an area initially designated nonattainment for the 8-hour NAAQS or a maintenance SIP for the 8-hour NAAQS for an area initially designated attainment for the 8-hour NAAQS. The rationale behind 40 CFR 51.905(e) is to ensure that the Kent and Queen Anne's area maintains the applicable ozone standard (the 8-hour standard in areas where the 1-hour standard has been revoked). EPA believes this rationale analogously applies to areas that were not initially designated, but are redesignated as attainment with the 8-hour ozone NAAQS. Therefore, EPA intends to treat redesignated areas as though they had been initially designated attainment of the 8-hour ozone NAAQS, and accordingly proposes to relieve the Kent and Queen Anne's area of its maintenance plan obligations with respect to the 1-hour standard. Once approved, the maintenance plan for the

8-hour ozone NAAQS will ensure that the SIP for the Kent and Queen Anne's area meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What is required In a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, 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 State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

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

Analysis of the Kent and Queen Anne's Area Maintenance Plan

(a) Attainment Inventory—the attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. MDE determined that the appropriate attainment inventory year is 2005. That year establishes a reasonable year within the three-year block of 2003–2005 as a baseline and accounts for reductions



attributable to implementation of the CAA requirements to date. The 2005 inventory is consistent with EPA guidance, is based on actual “typical summer day” emissions of VOC, NO<sub>x</sub>, and Carbon Monoxide (CO) during 2004, and consists of a list of sources and their associated emissions. To develop the NO<sub>x</sub> and VOC base year emissions inventories, MDE used the approaches outlined in the document titled “Inventory Preparation Plan/Quality Assurance Plan for Maryland.” The 2005 point source data was “grown” using the 2002 base year inventory. MDE projected the 2002 base year inventory using EPA’s EGAS Model (version 5.0) for all inventory years. EGAS (version 5.0) generates emission growth factors by sector. The 2005 area source data was projected using a variety of methods including the EGAS model (version 5.0) and forecasts prepared by the Baltimore Metropolitan Council. The nonroad inventory was developed using NONROAD model

(version 2004). The on road mobile source inventory was generated using the HPMS module of the PPSuite software. MDE used MOBILE model (version 6.2) to assess the mobile source emission levels in the counties and estimate the benefits gained from mobile control measures. This estimate assumes the following emissions control programs, which are or will be permanent and enforceable: Federal Motor Vehicle Control Program, the 1992 Reid Vapor Pressure Program, Tier 1 and 2 controls on new vehicles, Evaporative Emissions Control Program, Federal Reformulated Gasoline Program, Enhanced I/M Program in Queen Anne’s County, Stage I Vapor Recovery, On Board Controls and National Low Emissions Vehicle (NLEV) Program, Federal HDDE rule and low sulfur fuels regulations.

(b) Maintenance Demonstration—On May 2 and 19, 2006, MDE submitted a maintenance plan as required by section 175A of the CAA. The Kent and Queen

Anne’s plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO<sub>x</sub> remain at or below the attainment year 2005 emissions levels throughout Kent and Queen Anne’s through the year 2018. The Kent and Queen Anne’s 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 25418, 25430–32 (May 12, 2003).

Tables 4 and 5 specify the Kent and Queen Anne’s VOC and NO<sub>x</sub> emissions for 2005, 2009, and 2018. The MDE chose 2009 as an interim year in the 12-year maintenance demonstration period to demonstrate that the VOC and NO<sub>x</sub> emissions are not projected to increase above the 2005 attainment level during the time of the 12-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2005–2018 (TONS PER DAY)

Source category	2005 VOC emissions	2009 VOC emissions	2018 VOC emissions
Mobile .....	3.15	2.45	1.55
Nonroad .....	10.00	8.25	5.96
Area .....	5.31	5.54	5.17
Point .....	0.12	0.13	0.16
Total .....	18.58	16.37	12.84

2018 VOC Safety Margin: 5.74 tpd.

TABLE 5.—TOTAL NO<sub>x</sub> EMISSIONS 2005–2018 (TONS PER DAY)

Source category	2005 NO <sub>x</sub> emissions	2009 NO <sub>x</sub> emissions	2018 NO <sub>x</sub> emissions
Mobile .....	6.57	4.82	2.14
Nonroad .....	3.77	3.66	3.03
Area .....	0.25	0.26	0.28
Point .....	0.07	0.07	0.08
Total .....	10.66	8.81	5.53

2018 NO<sub>x</sub> Safety Margin: 5.13 tpd.

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

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that MDE has successfully demonstrated that the 8-hour ozone standard should be

maintained in the Kent and Queen Anne’s area.

(c) Monitoring Network—There is currently one monitor, the Millington monitor, measuring ozone in the Kent and Queen Anne’s area, which is located in Kent County. Maryland will continue to operate its current air quality monitor in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The State of Maryland has the legal authority to implement and enforce specified measures necessary to attain and maintain the NAAQS. Additionally, Federal programs such as Tier 2/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 Kent and Queen Anne’s area to maintain attainment.

In addition to maintaining the key elements of its regulatory program, Maryland requires ambient and source emissions data to track attainment and maintenance. The MDE proposes to fully update its point, area, and mobile emission inventories at 3-year intervals as required by the Consolidated Emissions Reporting Rule (CERR) and Section 187(a)(5) of the CAA. MDE will compare actual inventories to projected inventories, to determine if emission



levels exceed the attainment year levels. If there is an attainment year inventory excursion, MDE will assess the need to trigger contingency measures implementation procedures. In addition, MDE shall also continue to operate the existing ozone monitoring station in the area pursuant to 40 CFR part 58 throughout the maintenance period and submit quality-assured ozone data to EPA through the AIRS system.

(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 State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would “trigger” the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the State would adopt and implement the measure(s).

The ability of the Kent and Queen Anne's area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO<sub>x</sub> emissions in the area remaining at or below 2005 levels. The State's maintenance plan projects VOC and NO<sub>x</sub> emissions to decrease and stay below 2005 levels through the year 2018. The State's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur. They are as follows:

After the 4th exceedance of the 8-hour ozone NAAQS (0.08ppm) occurs within any given calendar year, the MDE will consider that fourth exceedance and any subsequent exceedance as the trigger by which an immediate recalculation of the design value for the Millington Monitor would be required. If the recalculated design value is shown to be above the 8-hour NAAQS (0.08ppm) then Maryland would initiate the following schedule:

(1) Within 2 weeks of the “trigger”—MDE will notify Kent and Queen Anne's Counties and other stakeholders of the violations and will schedule an initial work group meeting concerning contingency measures.

(2) Within 6 weeks of the “trigger”—MDE will convene a stakeholder group to evaluate the selection and implementation of the contingency

measures. The stakeholder group will be composed of interested State and local government agencies; business, environmental and health representatives; citizens and other interested parties

(3) Within 12 weeks of the “trigger”—A public meeting will be held on the proposed contingency measures

(4) Within 18 weeks of the “trigger”—MDE/ Stakeholders will meet to consider public comments and finalize a list of planned contingency measures

(5) After the list of planning of measures is finalized as identified above in step 4 it will take approximately 12 months from that date to go through any required rulemaking processes.

(6) Within 24 months of the “trigger”—Agreed-upon contingency measures will be implemented in the impacted counties

The following measures may be considered contingency measures:

- Industrial Commercial Institutional (ICI) Boiler RACT.

- Commuter/traffic measures such as Potential expansion of park and ride lots, expanded transit services, enhance opportunities for telecommuting/ flexible hours/ compressed work schedules.

- Expand Air Quality Action Day activities such as put off any painting until later; don't use aerosol consumer products; avoid mowing lawns with gasoline-powered mowers; start charcoal with an electric or chimney-type fire starter instead of lighter fluid; take public transportation; try telecommuting.

- Clean Air Partners public education outreach.

- Expansion of E-government services at State and county level.

- Bicycle and pedestrian enhancements such as additional trails and bike lanes.

- Emissions testing for truck transport.

- Land use/transportation policies.

- Promote non-motorized transport.

- Promote tree planting standards that favor trees with low VOC biogenic emissions.

- Promote energy saving plan for county government.

- Gas can and lawnmower replacement.

The maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. EPA believes that the maintenance plan SIP revision submitted by Maryland for Kent and Queen Anne's meets the requirements of section 175A of the Act.

## VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Kent and Queen Anne's Maintenance Plan 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 SIP.

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 Kent and Queen Anne's are listed in Table 1 of this document for the 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2009 and 2018 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

#### *B. What Is a Safety Margin?*

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: Kent and Queen Anne's first attained the 8-hour ozone NAAQS during the 2003 to 2005 time period. The State used 2005 as the year to

determine attainment levels of emissions for the Kent and Queen Anne's area. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2005 equaled 18.58 tpd of VOC and 10.66 tpd of NO<sub>x</sub>. The MDE projected emissions out to the year 2018 and projected a total of 12.84 tpd of VOC and 5.53 tpd of NO<sub>x</sub> from all sources in Kent and Queen Anne's. The safety margin for 2018 would be the difference between these amounts, or 5.74 tpd of VOC and 5.13 tpd of NO<sub>x</sub>. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR KENT AND QUEEN ANNE'S

Inventory year	VOC Emissions (tpd)	NO <sub>x</sub> Emissions (tpd)
2005 Attainment .....	18.58	10.66
2009 Interim .....	16.37	8.81
2009 Safety Margin .....	2.21	1.85
2004 Attainment .....	18.58	10.66
2018 Final .....	12.84	5.53
2018 Safety Margin .....	5.74	5.13

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR KENT AND QUEEN ANNE'S

Inventory year	VOC Emissions (tpd)	NO <sub>x</sub> Emissions (tpd)
2009 projected on-road mobile source projected emissions .....	2.45	4.82
2009 Safety Margin Allocated to MVEBs .....	0.27	0.29
2009 MVEBs .....	2.72	5.11
2018 projected on-road mobile source projected emissions .....	1.55	2.14
2018 Safety Margin Allocated to MVEBs .....	0.07	0.24
2018 MVEBs .....	1.62	2.38

The MDE allocated 0.29 tpd NO<sub>x</sub> and 0.27 tpd VOC to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO<sub>x</sub> projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the MDE allocated 0.24 tpd NO<sub>x</sub> and 0.07 tpd VOC from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBS for the Kent and Queen Anne's area.

#### *C. Why Are the MVEBs Approvable?*

The 2009 and 2018 MVEBs for Kent and Queen Anne's are approvable because the MVEBs for NO<sub>x</sub> and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

#### *D. What Is the Adequacy and Approval Process for the MVEBs in the Kent and Queen Anne's Maintenance Plan?*

The MVEBs for the Kent and Queen Anne's 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 Kent and Queen Anne's area 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 Kent and Queen Anne's MVEBs will also be announced on EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/index.html> (once there, click on "Transportation Conformity", then look for "Adequacy Review of SIP Submissions").

### VIII. Proposed Actions

EPA is proposing to determine that the Kent and Queen Anne's area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Kent and Queen Anne's area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated Maryland'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 Kent and Queen Anne's area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of Kent and Queen Anne's from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for the Kent and Queen Anne's area, submitted on May 2 and 19, 2006, as a revision to the Maryland SIP. EPA is proposing to approve the maintenance plan for the Kent and Queen Anne's area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by the Maryland for Kent and Queen Anne's area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. 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 Kent and Queen Anne's 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.*).

This rule proposing to approve the redesignation of Kent and Queen Anne's 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.*

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Dated: September 28, 2006.

**William T. Wisniewski,**

*Acting, Regional Administrator, Region III.*

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