

performance of the sound recording. A digital phonorecord delivery includes a phonorecord that is made in the course of the transmission for the purpose of making the digital phonorecord delivery, so long as it is fixed for a sufficient period of time to be capable of being perceived, reproduced, or otherwise communicated. A digital phonorecord delivery also includes phonorecords which embody portions of a musical work so long as those portions are, individually or in the aggregate, sufficient to permit the recipient to render the sound recording which embodies the musical work.

Dated: July 10, 2008

Marybeth Peters,

Register of Copyrights

[FR Doc. E8-16165 Filed 7-15-08; 8:45 am]

BILLING CODE 1410-30-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2007-1105; FRL-8580-2]

#### Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from marine coating operations and wood coating products. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by August 15, 2008.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2007-1105, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, EPA Region IX, (415) 947-4120, [allen.cynthia@epa.gov](mailto:allen.cynthia@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: MDAQMD Rule 1106 and VCAPCD Rule 74.30. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 3, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E8-16019 Filed 7-15-08; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R03-OAR-2007-0176; FRL-8693-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Greene County 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan and 2002 Base-Year Inventory

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Greene County 8-hour ozone nonattainment Area (referred to also as the “Greene County Area” or “Area”) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for the Greene County Area. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the Greene County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Greene County Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality monitoring data for 2003–2005. EPA’s proposed approval of the 8-hour ozone redesignation request is based on its determination that the Greene County Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, the Commonwealth of Pennsylvania has also submitted a 2002 base-year inventory for the Greene County Area,

and EPA is proposing to approve that inventory for the Area as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for the Greene County Area for purposes of transportation conformity, and is proposing to approve those MVEBs. EPA is proposing approval of the redesignation request, the maintenance plan, and 2002 base-year inventory SIP revisions in accordance with the requirements of the CAA.

**DATES:** Written comments must be received on or before August 15, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0176 by one of the following methods:

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

B. *E-mail*: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail*: EPA-R03-OAR-2007-0606, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2007-0176. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your

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

**Docket:** All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Melissa Linden, (215) 814-2096, or by e-mail at [linden.melissa@epa.gov](mailto:linden.melissa@epa.gov).

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

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#### I. What Are the Clean Air Actions EPA Is Proposing To Take?

On January 25, 2007, the PADEP formally submitted a request to redesignate the Greene County Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, Pennsylvania submitted a maintenance plan for the Greene County Area as a SIP revision to ensure continued

attainment in the Area over the next 10 years. PADEP also submitted a 2002 base-year inventory for the Greene County Area as a SIP revision. On May 23, 2008, PADEP submitted a revision to the January 25, 2007 submittal to include an alternate methodology used to project the 2009 and 2018 nitrogen oxides (NO<sub>x</sub>) emissions from stationary point sources. In addition, NO<sub>x</sub> emission projections from the January 25, 2007 submittal were changed to reflect the new methodology submitted in the May 23, 2008 revision.

Greene County is currently designated a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the Greene County Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Greene County Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Greene County maintenance plan as a SIP revision for the Area (such approval being one of the Act criteria for redesignation to attainment status). The maintenance plan is designed to ensure continued attainment in the Greene County Area for the next 10 years. EPA is also proposing to approve the 2002 base-year inventory for the Greene County Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Greene County maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) for the Area for transportation conformity purposes.

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

##### A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of Nitrogen Oxides (NO<sub>x</sub>) and Volatile Organic Compounds (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 standard is more stringent than the previous 1-hour standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air

quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Greene County Area was designated a basic 8-hour ozone nonattainment area in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003.

On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Greene County Area (as well as most other areas of the country), effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006) (hereafter "South Coast"). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04–1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under Subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for

failure to attain that NAAQS. In addition, the June 8 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes. Elsewhere in this document, mainly in section VI. B. "The Greene County Area Has Met All Applicable Requirements Under Section 110 and part D of the Clean Air Act and has a Fully Approved SIP Under Section 110(k) of the Act", EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating the Greene County Area to attainment of the 8-hour ozone NAAQS.

The CAA, title I, part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as "basic" nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as "classified" nonattainment) provides more specific requirements for ozone nonattainment areas. In 2004, the Greene County Area was classified a basic 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003. Therefore, the Area is subject to the requirements of subpart 1 of part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). See 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that the Greene County Area has a design value of 0.081 ppm for the 3-year period of 2003–2005, using complete, quality-assured data. Therefore, the ambient ozone data for

the Greene County Area indicates no violations of the 8-hour ozone standard.

### B. The Greene County Area

Prior to its designation as an 8-hour ozone nonattainment area, the Greene County Area was an incomplete data 1-hour ozone nonattainment area. See 56 FR 56694 (November 6, 1991).

On January 25, 2007, the PADEP requested that the Greene County Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Area. The data satisfies the CAA requirements that 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), must be less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area attained the standard and the area meets the redesignation requirements set forth in section 107(d)(3)(E) of the CAA.

### 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) allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- “Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, June 18, 1990;
- “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,” Memorandum from John Calcagni Director, Air Quality Management Division, October 28, 1992;
- “Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” dated November 30, 1993;
- “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

#### IV. Why Is EPA Taking These Actions?

On January 25, 2007, the PADEP requested redesignation of the Greene County Area to attainment for the 8-hour ozone standard. Simultaneously, PADEP submitted a maintenance plan for the Greene County Area as a SIP revision, to ensure continued attainment of the 8-hour ozone NAAQS over the next 10 years, until 2018. PADEP also submitted a 2002 base-year inventory concurrently with its maintenance plan as a SIP revision. PADEP also submitted a revision to the January 25, 2007, submittal on May 23, 2008, to include alternate methodology used to project the 2009 and 2018 emissions amounts from stationary point sources. In addition, NO<sub>x</sub> emission projections from the January 25, 2007, submittal were changed to reflect the new methodology submitted in the May 23, 2008, revision. EPA has determined that the Greene County Area has attained the 8-hour ozone standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

#### V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the official designation of the Greene County Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base-year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Greene County Area for the next 10 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the NO<sub>x</sub> and VOC MVEBs for transportation conformity purposes for the years 2004, 2009 and 2018.

These motor vehicle emissions (2004) and MVEBs (2009 and 2018) are displayed in the following table:

TABLE 1.—GREENE COUNTY MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)

Year	VOC	NO <sub>x</sub>
2004 .....	2.1	3.6
2009 .....	1.6	2.6
2018 .....	1.0	1.3

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

EPA is proposing to determine that the Greene County 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 PADEP’s January 25, 2007, submittal with the May 23, 2008, revision satisfies the requirements of section 107(d)(3)(E) of the CAA.

##### A. The Greene County Area Has Attained the 8-Hour NAAQS

EPA is proposing to determine that the Greene County 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 design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Greene County Area, there is one monitor that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania referenced ozone monitoring data for the years 2003–2005 (the most recent 3 years of data available as of the time of the redesignation request) for the Greene County Area. This data has been quality assured and is recorded in the AQS. The PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The fourth-high 8-hour daily maximum concentrations for the period from 2003–2005, along with the three-year average, are summarized in Table 2.

TABLE 2.—GREENE COUNTY NON-ATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; GREENE COUNTY MONITOR, AQS ID 42–059–0002

Year	Annual 4th high reading (ppm)
2003 .....	0.083
2004 .....	0.075
2005 .....	0.085
2006 .....	0.077

TABLE 2.—GREENE COUNTY NON-ATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; GREENE COUNTY MONITOR, AQS ID 42–059–0002—Continued

Year	Annual 4th high reading (ppm)
The average for the 3-year period 2003 through 2005 is 0.081 ppm.	
The average for the 3-year period 2004 through 2006 is 0.079 ppm.	

The air quality data for 2003–2005 shows that the Greene County Area has attained the standard with a design value of 0.081 ppm. The data collected at the Greene County Area monitor satisfies the Act requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is below the maximum design value of 0.085 ppm. The PADEP's request for redesignation for the Greene County Area indicates that the data is complete and was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and data taken from AQS indicate that the Greene County Area has attained the 8-hour ozone NAAQS.

*B. The Greene County Area Has Met All Applicable Requirements Under Section 110 and Part D of the Clean Air Act and Has a Fully Approved SIP Under Section 110(k) of the CAA*

EPA has determined that the Greene County 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 approvable with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Greene County 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 Clean Air Act 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 Act 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 Act. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). *See also*, 68 FR at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alters any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

**1. Section 110 General SIP Requirements**

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which includes enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;

- Implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD));

- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and

- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO<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 are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Greene County Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (*i.e.*, for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See*

also, the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 53099, October 19, 2001). Similarly, with respect to the NO<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(1) 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. As we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due for the Greene County Area prior to submission of the redesignation request.

## 2. Part D Nonattainment Area Requirements Under the 1-Hour and 8-Hour Standards

The Greene County Area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. As discussed previously, because the Greene County Area was designated incomplete data/nonattainment under the 1-hour standard, there are no outstanding 1-hour nonattainment area requirements it would be required to meet. Thus, we find that the Court’s ruling does not result in any additional 1-hour requirements for purposes of redesignation.

With respect to the 8-hour standard, EPA notes that the Court’s ruling rejected EPA’s reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA’s longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

At the time the redesignation request was submitted, the Greene County Area

was classified under subpart 1 and was obligated to meet subpart 1 requirements. Under EPA’s longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992 Calcagni memorandum (“Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division). See also, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004) (which upheld this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit recognized the inequity in such retroactive rulemaking. See, *Sierra Club v. Whitman*, 285 F.3d 63 (DC Cir. 2002), in which the DC Circuit upheld a District Court’s ruling refusing to make retroactive an EPA determination that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: “Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club’s proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plan in 1997, even though they were not on notice at the time.” *Id.* at 68. Similarly, here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to the 8-hour standard, EPA proposes to determine that Pennsylvania’s 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 redesignation request for the Greene County Area. Because the Commonwealth submitted a complete redesignation request for the Greene County Area prior to the deadline for any submissions required under the 8-hour standard, we have

determined that the Part D requirements do not apply to the Greene County Area for the purposes of redesignation.

In addition to the fact that no Part D requirements applicable under the 8-hour standard became due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements of Part D as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (“transportation conformity”) as well as to all other Federally supported or funded projects (“general conformity”). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required 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 (December 7, 1995).

In the case of the Greene County Area, EPA has also determined that before being redesignated, the Greene County Area need not comply with the requirement that a NSR program be approved prior to redesignation. Additionally, Pennsylvania’s preconstruction permitting program regulations in Chapter 127.200–217 of the Pennsylvania Code (approved into the SIP at 40 CFR 52.202(c)), apply only to ozone nonattainment area sources that are located in areas classified as marginal or worse, *i.e.*, to subpart 2 nonattainment areas. Pennsylvania’s NSR regulations do not apply to sources in nonattainment areas classified as basic nonattainment under subpart 1. Consequently, sources in the Greene County Area are subject to Part D NSR requirements of Appendix S to 40 CFR part 51, pursuant to 40 CFR 52.24(k). Appendix S of 40 CFR part 51 contains the preconstruction permitting program that applies to major stationary

sources in nonattainment areas lacking an approved Part D NSR program. Appendix S applies during the interim period after EPA designates an area as nonattainment, but before EPA approves revisions to a SIP to implement the Part D NSR requirements for that pollutant. *See*, 70 FR 71618 (November 29, 2005). The Chapter 127 part D NSR regulations in the Pennsylvania SIP explicitly apply to attainment areas within the Ozone Transport Region (OTR). *See*, Chapter 127 in 40 CFR 52.2020(c)(1); *See*, 66 FR 53094, October 19, 2001. Therefore, after the Greene County Area is redesignated to attainment, sources in the Greene County Area will be subject to Part D NSR applicable under the permitting regulations in Chapter 127, because the Greene County Area is located in the OTR.

All areas in the OTR, both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably available control technology (RACT), NSR, enhanced vehicle inspection and maintenance, and Stage II vapor recovery or a comparable measure.

In the case of Greene County Area, which is located in the OTR, nonattainment NSR will continue to be applicable after redesignation. On October 19, 2001 (66 FR 53094), EPA fully approved the 1-hour

Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Greene County Area. The Chapter 127 Part D NSR regulations in the Pennsylvania SIP explicitly apply the requirements for NSR of section 184 of the CAA to attainment areas within the OTR.

### 3. The Greene County Area Has a Fully Approved SIP for Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. *Calcagni Memo*, p.3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall v. EPA*, 265 F. 3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See*, 68 FR at 25425 (May 12, 2003) and citations therein.

The Greene County Area was a 1-hour incomplete data nonattainment area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004 (69 FR 23857). Because the Greene County Area was a 1-hour incomplete data nonattainment area, there are no previous Part D SIP submittal requirements. Also, no Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal

requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purpose of redesignation of the Greene County Area the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for the purpose of redesignation have yet become due for the Greene County Area, and therefore they need not be approved in to the SIP prior to redesignation.

### C. The Air Quality Improvement in the Greene County Area is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the Greene County Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO<sub>x</sub> EMISSIONS FOR 2002 AND 2004 IN TONS PER SUMMER DAY (TPSD)

Year	Point	Area	Mobile	Nonroad	Total
<b>Volatiles Organic Compounds (VOC)</b>					
2002 .....	1.9	1.9	2.4	1.3	7.5
2004 .....	1.9	1.9	2.1	1.2	7.1
Difference (02–04) .....	0.0	0.0	–0.3	–0.1	–0.4
<b>Nitrogen Oxides (NO<sub>x</sub>)</b>					
2002 .....	64.0	0.2	4.1	4.7	72.9
2004 .....	53.7	0.2	3.6	4.5	62.0
Difference (02–04) .....	–10.3	0.0	–0.5	–0.2	–10.9

\* Totals may not add due to rounding.

Between 2002 and 2004, VOC emissions decreased by 0.4 tpsd from 7.5 tpsd to 7.1 tpsd. During the same period, NO<sub>x</sub> emissions decreased by 10.9 tpsd from 72.9 tpsd to 62.0 tpsd. 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 Greene County Area achieving attainment of the 8-hour ozone

standard. These reductions, as well as anticipated future reductions, are due to the following permanent and enforceable measures.

#### 1. Stationary Point Sources

NO<sub>x</sub> SIP Call (66 FR 43795, August 21, 2001).

#### 2. Stationary Area Sources

Solvent Cleaning (68 FR 2206, January 16, 2003).

Portable Fuel Containers (69 FR 70893, December 8, 2004).

#### 3. Highway Vehicle Sources

Federal Motor Vehicle Control Programs (FMVCP):

—Tier 1 Rule (56 FR 25724, June 5, 1991);

—Tier 2 Rule (65 FR 6698, February 10, 2000).



Heavy-duty Engine and Vehicle Standards (62 FR 54694, October 21, 1997, and 65FR59896, October 6, 2000). National Low Emission Vehicle (NLEV) Program (64 FR 72564, December 28, 1999).

Changes to Vehicle Safety Inspection Program in non-I/M Counties (70 FR 58313, October 6, 2005).

#### 4. Non-Road Sources

Non-road Diesel Rule (69 FR 38958, June 29, 2004).

#### *D. The Greene County Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA*

In conjunction with its request to redesignate the Greene County ozone nonattainment area to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Area for at least 10 years after redesignation. The Commonwealth is requesting that EPA approve this SIP revision as meeting the requirement of Clean Air Act section 175A. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the Greene County Area meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

#### What Is Required in a Maintenance Plan?

Section 175 of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years 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 Greene County Area Maintenance Plan

(a) *Attainment inventory*—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. PADEP determined that the appropriate attainment inventory year is 2004. 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 2004 inventory is consistent with EPA guidance and is based on actual “typical summer day” emissions of VOC and NO<sub>x</sub> during 2004 and consists of a list of sources and their associated emissions.

(i) *Point source emissions*—Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data System and EPA’s publication series AP-42 and are based on Source Classification Code (SCC). Each process has at least one SCC assigned to it. If the owners and operators of facilities provide more accurate emission data based upon other factors, these emission estimates supersede those calculated using SCC codes.

(ii) *Area source emissions*—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. Pennsylvania estimates emissions from area sources using emission factors and SCC codes in a method similar to that used for stationary point sources. Emission factors may also be derived from research and guidance documents if those documents are more accurate than FIRE and AP-42 factors. Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

(iii) *On-road mobile sources*—PADEP employs an emissions estimation methodology that uses current EPA-approved highway vehicle emission

model, MOBILE 6.2, to estimate highway vehicle emissions. The Greene County Area highway vehicle emissions in 2004 were estimated using MOBILE 6.2 and PENNDOT estimates of vehicles miles traveled (VMT) by vehicle type and roadway type.

(iv) *Mobile nonroad emissions*—The 2004 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft or locomotives. For 2004 locomotive emissions, PADEP projected emissions from a 1999 survey using national fuel information and EPA emission and conversion factors. There are no commercial aircraft operations in the Greene County Area. For 2004 aircraft emissions, PADEP estimated emissions using small aircraft operation statistics from <http://www.airnav.com>, and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

More detailed information on the compilation of the 2002, 2004, 2009, and 2018 inventories can found in the Technical Appendices, which are part of the January 25, 2007 state submittal and the revision submitted on May 23, 2008.

(b) *Maintenance Demonstration*—On January 25, 2007, the PADEP submitted a maintenance plan as required by section 175A of the CAA. The Greene County Area maintenance 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 inventory year 2004 emissions levels throughout the Area through the year 2018. A maintenance demonstration need not be based on modeling. See *Wall v. EPA*, *supra*; *Sierra Club v. EPA*, *supra*. See also, 66 FR at 53099–53100; 68 FR at 25430–32.

Tables 4 and 5 specify the VOC and NO<sub>x</sub> emissions for the Greene County Area for 2004, 2009, and 2018. The PADEP chose 2009 as an interim year in the maintenance demonstration period to demonstrate that the VOC and NO<sub>x</sub> emissions are not projected to increase above the 2004 attainment level during the time of the maintenance period. The values in Table 5 reflect the alternative methodology submitted in the May 23, 2008 submittal.



TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004	2009	2018
Point .....	1.9	1.9	2.2
Area .....	1.9	1.7	1.7
Mobile .....	2.1	1.6	1.0
Nonroad .....	1.2	1.0	0.8
Total .....	7.1	6.1	5.6

TABLE 5.—TOTAL NO<sub>x</sub> EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004	2009	2018
Point .....	53.7	21.0	23.0
Area .....	0.2	0.2	0.2
Mobile .....	3.6	2.6	1.3
Nonroad .....	4.5	4.1	3.6
Total .....	62.0	27.9	28.1

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

- The Federal Clean Air Interstate Rule (71 FR 25328, April 28, 2006).
- The NO<sub>x</sub> SIP Call (66 FR 43795, August 21, 2001).
- Portable Fuel Containers Rule (69 FR 70893, December 8, 2004)
- Consumer Products Rule (69 FR 70895, December 8, 2004)
- Architectural and Industrial Maintenance (AIM) Coatings (69 FR 68080, November 23, 2004).
- Federal Light-duty Highway Vehicle Control Program (FMVCP)-Tier 1/Tier 2 Emissions Standards (Model Year 1994/2004); Tier 1—(56 FR 25724, June 5, 1991), Tier 2—(65 FR 6698, February 10, 2000).
- Federal Heavy-duty Diesel Highway Engine Standards (Model Year 2004/2007)/Low-Sulfur Highway Diesel Fuel Standards (2006); (66 FR 5002, January 18, 2001).
- Federal Nonroad Engine Emission Standards (Model Year 2008) and Nonroad Diesel Fuel (2007); (69 FR 38958, June 29, 2004).
- NLEV/PA Clean Vehicle Program (54 FR 72564, December 28, 1999).
- PA Vehicle Emission Inspection and Maintenance Program (70 FR 58313, October 6, 2005).
- Changes to Vehicle Safety Inspection Program for Non-I/M Counties (70 FR 58313, October 6, 2005).

Based on the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Greene County Area.

(c) *Monitoring Network*—There is one ozone monitor that provided monitoring

data to support of the Commonwealth's ozone maintenance plan for the Greene County Area. The Commonwealth has committed to continue to operate its monitoring network in accordance with 40 CFR part 58, with no reduction in the number of sites.

(d) *Verification of Continued Attainment*—In addition to maintaining the key elements of its regulatory program, the Commonwealth will track the attainment status of the ozone NAAQS in the Area by reviewing air quality and emissions data during the maintenance period. The Commonwealth will perform an annual evaluation of VMT data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR 51, subpart A) to see if they exceed the attainment year inventory (2004) by more than 10 percent. The PADEP will 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 AQS system. Section 175A(b) of the CAA states that eight years following redesignation of the Greene County Area, PADEP will be required to submit a second maintenance plan that will ensure attainment through 2028. PADEP has made that commitment to meet the requirement section 175A(b).

(e) *The Maintenance Plan's Contingency Measures*—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan

include such contingency measures as EPA deems necessary to ensure that the Commonwealth will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would “trigger” the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Greene County 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 2004 levels. The Commonwealth's maintenance plan projects VOC and NO<sub>x</sub> emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentration at the Greene County Area monitor is above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will also analyze the conditions leading to the excessive ozone levels and evaluate which measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state and local measures that have been adopted but not yet implemented at the time the excessive

ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will also be considered in the event that a violation of the 8-hour ozone standard occurs at the Greene County Area monitor. In the event of a violation of the 8-hour ozone standard, PADEP will adopt additional emissions reduction measures as expeditiously as practicable in accordance with the implementation schedule listed later in this notice and in the Pennsylvania Air Pollution Control Act in order to return the Area to attainment with the standard. Contingency measures to be considered for the Greene County Area will include, but not be limited to the following:

*Regulatory measures:*

- Additional controls on consumer products.
- Additional controls on portable fuel containers.

*Non-Regulatory measures:*

- Voluntary diesel engine “chip reflash” (installation software to correct the defeat device option on certain heavy-duty diesel engines).
- Diesel retrofits, including replacement, repowering or alternative fuel use, for public or private local on-road or off-road fleets.
- Idling reduction technology for Class 2 yard locomotives.
- Idling reduction technologies or strategies for truck stops, warehouses and other freight handling facilities.
- Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
- Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

The plan sets forth a process to have regulatory contingency measures in effect within 19 months of the trigger. The plan also lays out a process to implement non-regulatory contingency measures within 12–24 months of the trigger.

## **VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Greene County Area Plan Adequate and Approvable?**

### *A. What are the Motor Vehicle Emissions Budgets?*

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*i.e.*, reasonable further progress SIPs and attainment demonstration SIPs) and

maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan, the MVEBs are termed “on-road mobile source emission budgets.” Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. An MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. An MVEB serves as a ceiling on emissions from an area’s planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must “conform” to (*i.e.*, be consistent with) the part of a State’s air quality plan that addresses pollution from cars and trucks. “Conformity” to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not “conform,” most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted “control strategy” SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein “adequate” for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, the MVEB can be used by state and federal agencies in determining whether proposed transportation projects “conform” to the SIP as required by section 176(c) of the Act. EPA’s substantive criteria for determining “adequacy” of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA’s process for determining “adequacy” consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA’s adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA’s May 14, 1999 guidance, “Conformity Guidance on Implementation of March 2, 1999,

Conformity Court Decision.” This guidance was finalized in the Transportation Conformity Rule Amendments for the “New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change” on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

The MVEBs for the Greene County Area are listed in Table 6 for 2009 and 2018. Table 6 presents 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: the Greene County Area attained the 8-hour ozone NAAQS during the 2003 to 2005 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the Greene County Area. The sum total emissions for 2004 for point, area, mobile on-road, and mobile non-road sources for the Area are 7.1 tpsd of VOC and 62.0 tpsd of NO<sub>x</sub>. The PADEP projected that total emissions for the year 2018 will be 5.6 tpsd of VOC and 28.1 tpsd of NO<sub>x</sub> from all sources in the Area. The Area-wide safety margin for 2018 would be the difference between these amounts, or 1.5 tpsd of VOC and 33.9 tpsd 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.—SAFETY MARGINS FOR GREENE COUNTY AREA (2009 &amp; 2018)

Inventory year	VOC emissions (tpsd)	NO <sub>x</sub> emissions (tpsd)
2004 Attainment .....	7.1	62.0
2009 Interim .....	6.1	27.9
2009 Safety Margin .....	1.0	34.1
2004 Attainment .....	7.1	62.0
2018 Final .....	5.6	28.1
2018 Safety Margin .....	1.5	33.9

### C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the Greene County Area are approvable because the MVEBs for VOCs and NO<sub>x</sub> 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 MVEBs in the Maintenance Plan?

The MVEBs for the Greene County Area maintenance plan are being posted to EPA's conformity Web site concurrently with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing 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 EPA is proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

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

### VIII. Proposed Actions

EPA is proposing to determine that the Greene County Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Area from nonattainment to attainment for the 8-hour ozone

NAAQS. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Greene County Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for the Area, submitted on January 25, 2007, as a revision to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Greene County Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the 2002 base-year inventory for the Greene County Area, submitted by PADEP on January 25, 2007, along with the revision submitted on May 23, 2008 to include new methodology used to project the 2009 and 2018 emissions amounts from stationary point sources. Finally, EPA is proposing to approve the MVEBs submitted by Pennsylvania for the Greene County 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

approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule proposing to approve the redesignation of the Tioga Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This rule, proposing to approve the redesignation of the Greene County Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: July 3, 2008.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. E8-16278 Filed 7-15-08; 8:45 am]

**BILLING CODE 6560-50-P**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 622

[Docket No. 0612242911-7380-01]

**RIN 0648-AU28**

##### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 14

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement the applicable provisions of Amendment 14 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). Amendment 14 proposes, and this rule would implement, establishment of eight marine protected areas (MPAs) in which fishing for or possession of South Atlantic snapper-grouper would be prohibited. The prohibition on possession would not apply to a person aboard a vessel that was in transit with fishing gear appropriately stowed. Amendment 14 also proposes to prohibit the use of shark bottom longlines within the MPAs, however, NMFS is proposing to implement the prohibition of shark bottom longlines through separate rulemaking. The intended effects of this proposed rule are to protect a portion of the population and habitat of long-lived, slow growing, deepwater snapper-grouper from fishing pressure to achieve a more natural sex ratio, age, and size structure within the proposed MPAs, while minimizing adverse social and economic effects.

**DATES:** Written comments on this proposed rule must be received no later

than 5 p.m., eastern time, on August 15, 2008.

**ADDRESSES:** You may submit comments, identified by "0648-AU28", by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>.
- Fax: 727-824-5308; Attention: Kate Michie.

- Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 14 may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: 843-571-4366 or 866-SAFMC-10 (toll free); fax: 843-769-4520; e-mail: [safmc@safmc.net](mailto:safmc@safmc.net). Amendment 14 includes a Final Environmental Impact Statement (FEIS), a Biological Assessment, an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone: 727-824-5305, fax: 727-824-5308, e-mail: [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. NMFS issues this proposed rule to implement the applicable provisions of Amendment 14 to the FMP. The Atlantic shark fishery is managed under the Consolidated Highly Migratory Species Fishery Management Plan (HMS FMP). The HMS FMP is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 635.