

### XIII. 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 proposed 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 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not 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). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (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. This proposed rule 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 6, 2005.

**Kerrigan G. Clough,**

*Acting Regional Administrator, Region VIII.* [FR Doc. 05-9724 Filed 5-16-05; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2005-VA-0004; FRL-7913-7]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Attainment Demonstration for the Roanoke Metropolitan Statistical Area (MSA) Early Action Compact Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The proposed revision consists of an Early Action Compact (EAC) Plan that will enable the Roanoke MSA EAC Area to demonstrate attainment and maintenance of the 8-hour ozone national ambient air quality (NAAQS) standard. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before June 16, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-VA-0004 by one of the following methods:

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

**B. Agency Web site:** <http://www.docket.epa.gov/rmepub/> RME, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.

**C. E-mail:** [campbell.dave@epa.gov](mailto:campbell.dave@epa.gov).

**D. Mail:** R03-OAR-2005-VA-0004, David Campbell, Chief, Air Quality Planning Branch, 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 RME ID No. R03-OAR-2005-VA-0004. EPA’s policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index,

some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Wentworth, (215) 814-2034, or by e-mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:** On December 21, 2004, the Commonwealth of Virginia submitted a revision to its SIP. This revision consists of an Early Action Plan (EAP) for the Roanoke MSA Ozone EAC Area. On February 17, 2005, the Commonwealth supplemented its December 20, 2004 submittal by providing a copy of the record of hearing and summary of testimony during its rule adoption process.

## I. Background

In 1997, EPA established a new 8-hour ozone NAAQS that addresses the longer-term impact of ozone at lower levels. As such, the new standard is set at a lower level, 0.08 parts per million (ppm) than the previous 1-hour standard, 0.120 ppm, and is more protective of human health. Attainment of the 8-hour ozone standard is determined by averaging three years of the fourth highest 8-hour ozone levels as recorded by ambient air quality monitor(s) in an area. This number, called the design value, must be lower than 85 parts per billion (ppb) in order for the area to comply with the ozone standard. Currently, the Roanoke MSA EAC Area, which consists of the Counties of Botetourt and Roanoke, the Cities of Roanoke and Salem, and the Town of Vinton, has an official design value, based on quality-assured air quality date for the period 2001 to 2003, of 85 ppb.<sup>1</sup>

<sup>1</sup> To attain the 8-hour national ambient air quality standard (NAAQS) for ozone requires the fourth highest 8-hour daily maximum ozone concentration, average over three consecutive years, to be  $\leq$  80 parts per billion (ppb) at each monitoring site (See 40 CFR part 50.10, Appendix I, paragraph 2.3). Because of the stipulations for rounding significant figures, this equates to a modeled attainment target of  $\leq$  84 ppb. Because non-significant figures are truncated, a modeling estimate of  $< 85$  ppb is equivalent to  $\leq 84$  ppb.

To begin to address the elevated ozone concentrations in the Roanoke MSA, the Virginia Department of Environmental Quality (VADEQ) investigated voluntary actions that could be implemented proactively to improve air quality. Virginia found the most promising of all of the options it explored to be EPA's EAC program. EACs are voluntary agreements entered into by affected local jurisdictions, State regulatory agencies, and EPA to develop EAPs to reduce ozone precursor pollutants, such as nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) and improve local air quality. The goal of an EAP is to bring about a positive change to local air quality on a schedule that is faster than the traditional regulatory nonattainment area designation and air quality planning process. These plans include the same components of traditional SIPs for nonattainment areas: emissions inventories, control strategies, schedules and commitments, and a demonstration of attainment based on photochemical modeling.

The goal of an EAP is to develop a comprehensive strategy that will allow an area to achieve attainment of the 8-hour ozone standard by 2007. This goal is accomplished by selecting and implementing the local ozone precursor pollutant control measures and other State and nationally-implemented control measures that reduce emissions and allows the area to comply with the NAAQS for ozone. Areas successful in developing a plan that demonstrates attainment of the 8-hour ozone standard by 2007 will receive a deferral of the effective date of the nonattainment designation for the area from EPA. This deferral will remain in place as long as certain milestones are met, such as implementation of local controls by 2005. If the interim milestones are met and the area demonstrates attainment of the standard during the period from 2005 to 2007, based on quality-assured air quality data, then the nonattainment designation for the relevant area will be withdrawn by EPA and the area will face no further regulatory requirements. If an area fails at any point in the process, the nonattainment designation will become effective along with all of the associated regulatory requirements of such a designation.

In December 2002, a number of States entered into EAC agreements, pledging to reduce emissions earlier than required by the Act for compliance with the 8-hour ozone standard. These States and local communities had to meet specific criteria and agreed to meet certain milestones for development and implementation of their individual EAC

agreements. States with communities participating in the EAC program had to submit plans for meeting the 8-hour ozone standard by December 31, 2004, rather than the June 15, 2007 deadline applicable to all other areas not meeting the standard. The EACs required communities to develop and implement air pollution control strategies, account for emissions growth, and demonstrate attainment and maintenance of the 8-hour ozone standard. Greater details on the EAC program are explained in EPA's December 16, 2003 (68 FR 70108) proposed **Federal Register** notice entitled, "Deferral of Effective Date of Nonattainment Designations for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas." In December 2002, the Roanoke MSA entered into an EAC with both the Commonwealth of Virginia and EPA. This compact was signed by all parties involved and then submitted to EPA by the required date of December 31, 2002.

On April 15, 2004, EPA designated all areas for the 8-hour ozone standard. The EPA deferred the effective date of nonattainment designations for EAC areas that were violating the 8-hour standard, but continued to meet their established EAC milestones. On April 30, 2004 (69 FR 23858), EPA published its formal air quality designations and classifications for the 8-hour ozone standard. This action included the deferral of the effective date for all nonattainment areas that entered into EACs and developed EAPs, including the Roanoke MSA EAC Area. Specifically, the Roanoke MSA was designated as a "basic" nonattainment area with the effective date of the designation deferred to September 30, 2005. In a separate notice, EPA expects to continue to officially defer the effective date of the nonattainment designation for this Area, among others, in the future so long as the Area continues to fulfill its EAC obligations, including semi-annual status reporting requirements, implementation of the measures in its EAP by December 31, 2005, and a progress assessment by June 30, 2006. EPA anticipates extending the currently effective deferral for all EAC areas from September 30, 2005 until December 31, 2006, provided the above conditions are met.

## II. Summary of the SIP Revision

### A. Content of the Roanoke MSA EAC Area Attainment Demonstration

As part of its EAC plan, Virginia developed an attainment demonstration supported by an ozone photochemical modeling study for the Roanoke MSA EAC Area. The attainment

demonstration identifies a set of measures that will result in emission reductions and provides analyses that predict that the measures will result in ambient air quality concentrations that meet the 8-hour ozone standard in the Roanoke MSA EAC Area.

The attainment demonstration was supported by results of a photochemical modeling analysis and technical documentation for all ozone monitors in the Roanoke MSA EAC Area. EPA believes that VADEQ's 8-hour ozone photochemical modeling study developed for the Roanoke MSA EAC Area meets EPA's current modeling requirements. The Commonwealth has adequately followed all relevant EPA guidance in demonstrating that the Roanoke MSA EAC Area will attain the 8-hour ozone NAAQS in 2007, and continue to do so in 2012. The modeling results predict the maximum 2007 8-hour ozone design value for this area to be 80.1 ppb, which is less than what is needed ( $\leq 84$  ppb) to show modeled attainment of the 8-hour ozone NAAQS.

The attainment modeling information presented in this notice should be used in conjunction with the Commonwealth's SIP submittal and EPA's technical support document (TSD), as certain modeling requirements performed by the State (*i.e.*, details of the quality assurance performed, detailed analysis of data suitability, complete listings of all data inputs and outputs, etc.) are not reproduced in this notice.

#### *B. Measures Included in the EAC SIP*

The Roanoke MSA EAP is designed to enable a proactive approach to ensuring attainment of the 8-hour ozone NAAQS. Using the EAP approach, the Roanoke MSA EAC Area will be implementing emission-reduction measures directed at attaining the 8-hour standard starting in 2005. The Area is then required to demonstrate compliance with the 8-hour ozone standard by 2007, and maintain compliance with the standard at least through 2012. Compliance with the standard will be determined using ozone monitoring data.

The EAP control measures for the Roanoke MSA EAC Area consist of local, State, and Federal emission reduction strategies. Control measures to be implemented on the local level that were included in the demonstration of attainment for the Area include a comprehensive local air quality action day strategy. This strategy is a combination of activities to reduce ozone precursors. Local and county governments are making commitments to limit or ban certain ozone precursor forming activities during predicted high

ozone days such as restrictions on residential and public landscaping operations, pesticide applications, refueling of vehicles, and vehicle travel. Voluntary restrictions on these types of activities will be requested of local businesses and the general public.

Virginia has also submitted a number of locally implemented measures in their EAP that, although not included in the attainment demonstration, will provide additional air quality benefits to the Roanoke MSA EAC Area and surrounding communities. These control measures include: heavy duty diesel and diesel equipment strategies (reduction of locomotive and school bus idling, retrofit technology for school buses, the purchase and use of alternative fuel vehicles and biodiesel-ready trucks, the purchase of hybrid vehicles, educational and training programs on vehicle use); tree canopy/urban forestry strategies; expansion of a bicycle infrastructure; a gasoline-powered lawnmower buy-back program; and open burning restrictions during days with elevated predicted ozone concentrations.

In addition to the local strategies, several State and Federal actions have or will produce substantial ozone precursor emissions reductions both inside and outside of the local EAC Area. These State and Federal actions are aimed at reducing local emissions by limiting the transport of pollution into the Area from emissions sources located outside of the local area. These strategies, when combined with the local strategies, are expected to lower area ozone concentrations to the level at or below the ozone standard.

Control measures to be implemented on the State level that were included in the attainment demonstration for the Area include VOC and NO<sub>x</sub> RACT controls for selected point and area sources in the Roanoke MSA Area; State cutback asphalt regulations that will control VOC emissions in the Roanoke Area; and Stage I vapor recovery for gasoline fueling stations.

Virginia has also submitted a number of State-supported measures in their EAP that were not included in the attainment demonstration, but are expected to provide additional air quality benefits to the Roanoke MSA EAC Area. These control measures include: the National Low Emissions Vehicle Program (NLEV) and the utilization of an enhanced ozone forecasting tool for the Roanoke Area to support the local ozone action days program and associated voluntary emission reduction efforts.

The NO<sub>x</sub> SIP Call (63 FR 57356, October 27, 1998) required States to

implement reductions necessary to address the ozone transport problem, and on June 25, 2002, Virginia submitted its NO<sub>x</sub> Budget Trading Program to meet its Phase I NO<sub>x</sub> SIP Call obligations. Virginia's Phase I program applies to electric generating units that serve a generator greater than 25 megawatts and to industrial units greater than 250 mmBTU/hr. On July 8, 2003 (68 FR 40520), EPA conditionally approved Virginia's NO<sub>x</sub> Budget Trading Program, and fully approved the program on August 25, 2004 (69 FR 52174). Virginia began implementing its NO<sub>x</sub> Budget Trading Program during the 2004 ozone season. The photochemical modeling that demonstrates attainment for the Roanoke MSA Area relies upon expected benefits from the NO<sub>x</sub> SIP Call throughout the modeling domain.

To help achieve attainment in the Area, the VADEQ has recently adopted NO<sub>x</sub> reasonably available control technology (RACT) requirements for certain sources located in the Roanoke MSA EAC Area. At this time, Virginia has formally established NO<sub>x</sub> RACT requirements for three sources located in the Roanoke MSA EAC Area. The Commonwealth has submitted the source-specific RACT requirements to EPA for approval into the Virginia SIP. On April 27, 2005 (70 FR 21621), EPA published a final rulemaking approving the source-specific NO<sub>x</sub> RACT determinations for the Roanoke MSA EAC area.

At the Federal level, numerous EPA programs have been or will be implemented to reduce ozone pollution. These programs, that were included in the modeled demonstration of attainment, cover all the major categories of ozone generating pollutants and are designed to assist many areas that need to come into compliance with the Federal ozone standard. These include stationary and area source controls (low-VOC industrial/architectural paints, vehicle paints, metal-cleaning products, and consumer products); motor vehicle emissions controls for VOC and NO<sub>x</sub> (NLEV, Tier 2 vehicle requirements, and heavy-duty diesel standards); and non-road vehicle and equipment standards (lawn and garden equipment, construction equipment, boat engines, and locomotives).

All these measures have been developed to address the creation of ozone producing emissions in local areas as well as to lessen the regional transport of ozone as a comprehensive approach to reducing ozone levels. A detailed description of all the control measures including those that were included in the attainment

demonstration, as well as the additional measures that are expected to assist the Area in meeting attainment of the standard in 2007, can be found in the TSD prepared in support of this rulemaking.

#### *C. Maintenance for Growth*

Consistent with EPA guidance, the EAP also contains components to ensure maintenance of the 8-hour ozone standard through 2012, five years beyond the 2007 attainment date. The Roanoke MSA EAC Area has developed an emissions inventory for the year 2012, as well as a continuing planning process to address this essential part of the plan. Due to the emission control measures identified in the EAP, the emissions inventory predicted an overall reduction in emissions through 2012. From 1999 to 2007, emissions of VOCs are estimated to decline by 27.6 percent and emissions of NO<sub>x</sub> are estimated to be reduced by 28.2 percent. By 2012, emissions are predicted to be 8.2 percent less than those modeled in 2007 for VOCs, and 25.5 percent less than those modeled in 2007 for NO<sub>x</sub>. Using air quality models to anticipate the impact of growth, as well as the Federal, State-assisted, and locally-implemented measures to reduce emissions, the Commonwealth of Virginia has projected the Area will be in attainment of the 8-hour ozone standard in 2007, and will remain in attainment through 2012.

To fulfill the continuing planning process that will ensure that the Roanoke MSA EAC Area will maintain the 8-hour ozone standard through 2012, the Roanoke MSA EAP establishes a commitment and mechanism to work with local stakeholders to identify and require additional measures to further reduce ozone precursor emissions. In addition, the EAC signatories and implementing agencies will review all EAC activities and report on these results in their semi-annual reports, beginning in June 2006. The semi-annual reports will track and document, at a minimum, control strategy implementation and results, monitoring data, and future plans. Furthermore, as part of the SIP submittal, the Roanoke MSA commits to submit periodic updates to VADEQ and EPA on the implementation status and results of the local control program with sufficient details to make program sufficiency determinations. Although not required by the EPA, the Roanoke MSA EAP contains contingency measures which could be implemented in response to any unexpected shortfall in anticipated reductions. These additional strategies include the implementation of one or

more of the following Ozone Transport Commission (OTC) rules: Portable Container Rule, the Architectural/Industrial Maintenance Coatings Rule, Mobile Equipment Repair and Refinishing Rule, Solvent Cleaning Operations Rule, and Consumer Products Rule.

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

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. \* \* \*" The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these

programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

#### **IV. Proposed Action**

EPA is proposing to approve the attainment demonstration and the EAP for the Roanoke MSA EAC Area in the Commonwealth of Virginia. The modeling of ozone and ozone precursor emissions from sources in the Roanoke MSA EAC Area demonstrates that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007, and maintenance of that standard through 2012. To date, the Roanoke MSA has met all of its EAC milestones, and, as long as the Area continues to meet the agreed upon milestones, the nonattainment designation for this Area will be deferred until September 30, 2005. EPA is soliciting public comments on the issues discussed in this

document. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)). This action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for

failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

This proposed rule, pertaining to the attainment demonstration and EAP for the Roanoke MSA ozone EAC Area, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 3, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 05-9782 Filed 5-16-05; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R03-OAR-2005-MD-0004; FRL-7913-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Attainment Demonstration for the Washington County Early Action Compact Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. The proposed revision

consists of an Early Action Compact (EAC) Plan that will enable the Washington County EAC Area to demonstrate attainment and maintenance of the 8-hour ozone national ambient air quality (NAAQS) standard. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before June 16, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-MD-0004 by one of the following methods:

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

**B. Agency Web site:** <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

**C. E-mail:** [campbell.dave@epa.gov](mailto:campbell.dave@epa.gov).

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