

quantified, surplus, permanent, and, if approved, will be Federally enforceable SIP revisions. We have reviewed the CAAP and the attainment demonstration and determined that they are consistent with the requirements of the CAA, EPA's policy, and the EAC protocol. The modeling of ozone and ozone precursor emissions from sources in the five county Austin EAC area demonstrate that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007.

#### X. 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 and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 (Pub. L. 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 under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), 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 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 40 CFR Part 52

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

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

Dated: May 13, 2005.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 05-10194 Filed 5-20-05; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R06-OAR-2005-TX-0010; FRL-7916-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Attainment Demonstration for the San Antonio Early Action Compact Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the Chairman of the Texas Commission on Environmental Quality (TCEQ) on December 6, 2004. The proposed revisions will demonstrate attainment of the 8-hour ozone standard and incorporate the San Antonio Early Action Compact (EAC) Clean Air Plan into the Texas SIP. EPA is proposing approval of the photochemical modeling in support of the attainment demonstration of the 8-hour ozone standard within the San Antonio EAC area and is proposing approval of the associated control measures. EPA is proposing these actions as a strengthening of the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act), which will result in emission reductions needed to help achieve attainment and maintenance of the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone.

**DATES:** Comments must be received on or before June 22, 2005.

**ADDRESSES:** Submit comments, identified by Regional Material in EDocket (RME) ID No. R06-OAR-2005-TX-0010, by one of the following methods:

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

Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

U.S. EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

E-mail: Mr. Thomas Diggs at [diggs.thomas@epa.gov](mailto:diggs.thomas@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue,

Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Regional Material in EDocket (RME) ID No. R06-OAR-2005-TX-0010. The EPA's policy is that all comments received will be included in the public file without change, and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), [regulations.gov](http://regulations.gov), or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the federal [regulations.gov](http://regulations.gov) are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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 Regional Material in EDocket (RME) index at <http://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 the official file which is available at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public

inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Carrie Paige, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, wherever "we," "our," and "us" is used, we mean EPA.

**Outline**

- I. What Action Are We Proposing?
- II. What Is an EAC?
- III. What Is a SIP?
- IV. What Is the Content of the San Antonio EAC Attainment Demonstration?
- V. Why Are We Proposing to Approve This EAC SIP Submittal?
- VI. What Measures Are Included in This EAC SIP Submittal?
- VII. What Happens if the Area Does Not Meet the EAC Milestones?
- VIII. Proposed Action
- IX. Statutory and Executive Order Reviews

**I. What Action Are We Proposing?**

Today we are proposing to approve revisions to the Texas SIP under sections 110 and 116 of the Act. These revisions demonstrate attainment and maintenance of the 8-hour ozone standard within the San Antonio EAC area and incorporate the San Antonio EAC Clean Air Plan (CAP) into the Texas SIP. The EAC is a voluntary agreement between the TCEQ, the Alamo Area Council of Governments (AACOG), the EPA, Bexar, Comal, Guadalupe and Wilson Counties, and the cities of Floresville, New Braunfels, San Antonio and Seguin. The intent of this agreement is to reduce ozone pollution earlier than the Act requires and thereby maintain the 8-hour ozone standard. The San Antonio EAC sets forth a schedule to develop technical information about local ozone pollution,

and adopt and implement a clean air plan, consisting of emissions control measures to ensure that the EAC area achieves compliance with the 8-hour ozone standard by December 31, 2007. Section VI of this rulemaking describes the control measures that will be implemented within the San Antonio EAC area.

**II. What Is an EAC?**

The Early Action Compact program was developed to allow communities an opportunity to reduce emissions of ground level ozone pollution sooner than the Act requires. The program was designed for areas that approach or monitor exceedances of the 8-hour standard, but are in attainment for the 1-hour ozone standard. The compact is a voluntary agreement between local communities, State and Tribal air quality officials and EPA, which allows participating State and local entities to make decisions that will accelerate meeting the new 8-hour standard using locally tailored pollution controls instead of federally mandated measures. Early planning and early implementation of control measures that improve air quality will likely accelerate protection of public health. The EPA believes this program provides an incentive for early planning, early implementation, and early reductions of emissions leading to expeditious attainment and maintenance of the 8-hour ozone standard.

Communities with EACs will have plans in place to reduce air pollution at least two years earlier than required by the Act. In December 2002, a number of States submitted compact 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 the compact. States with communities participating in the EAC program had to submit plans by December 31, 2004 for meeting the 8-hour ozone standard, rather than June 15, 2007, the deadline for all other areas not meeting the standard. The EAC program required communities to develop and implement air pollution control strategies, account for emissions growth and demonstrate their attainment and maintenance of the 8-hour ozone standard. Greater details of 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.”

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 continue to meet the compact milestones. Details of this deferral were announced on April 15, 2004 as part of the Clean Air Rules of 2004, and published in the **Federal Register** on April 30, 2004 in the notice entitled “Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates” (69 FR 23858).

### III. What Is a SIP?

The SIP is a set of air pollution regulations, control strategies and technical analyses developed by the state, to ensure that the state meets the National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The SIP is required by section 110 of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### IV. What Is the Content of the San Antonio EAC Attainment Demonstration?

In support of this proposal, the TCEQ conducted an ozone photochemical modeling study developed for the San Antonio EAC area. The modeling study predicts whether or not the EAC area will attain the 8-hour ozone NAAQS in 2007. The attainment demonstration includes analyses which estimate whether selected emissions reductions will result in ambient concentrations that meet the 8-hour ozone standard in the San Antonio area and an identified set of measures which will result in the required emissions reductions. See the Technical Support Document (TSD) for a description of the control measures. The modeled attainment test is passed if all resulting predicted future design values are less than 85 parts per billion (ppb). The design value is the three year average of the annual fourth highest 8-hour ozone readings.

The attainment demonstration was supported by results of photochemical modeling and technical documentation for all monitors in the San Antonio EAC

area. The demonstration incorporates the effects of population and industry growth, as well as national and statewide control measures or programs required to be in place by 2007 and 2012. The modeling study demonstrates that the 8-hour ozone standard will be attained by 2007 and maintained through 2012. The modeling analyses were further supported by some of the weight of evidence analyses that were evaluated for the San Antonio area.

We believe this study meets our modeling requirements and guidelines, including such items as the base year inventory development, the growth rate projections, and the performance of the model. See Attachment A of our TSD for more information about this modeling study, the weight of evidence analyses, and our evaluation of these items. The modeling submitted in support of this proposal demonstrates that the San Antonio EAC area will be in attainment with the 8-hour ozone NAAQS in 2007. The latest modeling results for the San Antonio EAC area predict a maximum ozone design value of 84 ppb for 2007, which is below the 8-hour ozone limit of 85 ppb. See section VI of this document for a list of local control measures that will be implemented within the San Antonio EAC area. We are proposing to approve the 8-hour ozone attainment demonstration, the CAP and the local control measures within the CAP for the San Antonio EAC area.

### V. Why Are We Proposing to Approve This EAC SIP Submittal?

On December 9, 2002, Texas signed an EAC for the four-county San Antonio Metropolitan Statistical Area, which was also signed by representatives of the local communities, State air quality officials and the EPA Region 6 Administrator. On April 15, 2004 (69 FR 23858), the EPA designated the 8-hour ozone nonattainment areas and designated the four-county San Antonio EAC area as nonattainment for the 8-hour ozone standard. To date, the San Antonio area has met all EAC milestones and, as long as the San Antonio EAC area continues to meet the agreed upon milestones, the impact of the nonattainment designation may be deferred until April 15, 2008.

We are proposing to approve this EAC SIP submittal because implementation of the requirements in this EAC will help ensure the San Antonio EAC area's compliance with the 8-hour ozone standard by December 31, 2007 and maintenance of that standard through 2012. We have reviewed the submittal and determined that it is consistent with the requirements of the Act, EPA's

policy, and the EAC protocol. Our TSD contains detailed information concerning this rulemaking action.

Approving San Antonio's CAP into the SIP will also mean that measures and controls identified in the CAP are federally enforceable and the San Antonio EAC communities will start to benefit from reductions in air pollution earlier than the statutory deadlines. See section VI of this rulemaking action for a description of the air pollution control measures. Finally, it means that EPA has determined that the State and local area have continued to fulfill the milestones and obligations of the EAC Program. In a separate notice, EPA will take action to propose deferring the effective date of the nonattainment designation for areas that are participating in the Early Action Compacts until December 31, 2006, so long as the areas continue to fulfill the EAC obligations, including semi-annual reporting requirements, implementation of the measures in submitted clean air plans by December 31, 2005, and a progress assessment by June 30, 2006.

### VI. What Measures Are Included in This EAC SIP Submittal?

The EPA designated the San Antonio EAC area as nonattainment for the 8-hour ozone standard on April 15, 2004 (69 FR 23858). The design value for 2001–2003 was 89 ppb. The TCEQ has submitted these revisions to the SIP, as progressive measures to avoid continued violation of the 8-hour ozone standard within the affected area and to be eligible for the opportunity for a second deferral of the effective date of nonattainment to December 31, 2006. While the implementation of the local control strategies is estimated to reduce emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>), the San Antonio EAC area has demonstrated attainment through the implementation of federal and statewide rules, without including the effects of these local measures in their photochemical modeling.

The TSD discusses the results of photochemical modeling and technical analyses that support a demonstration of attainment of the 8-hour ozone standard by December 31, 2007 and maintenance of that standard through 2012. To help achieve attainment, the San Antonio EAC CAP includes two rule revisions: Lowering the Stage I Vapor Recovery exemption and degreasing requirements, each of which will contribute to reductions in VOCs in the San Antonio EAC area. VOCs, as well as NO<sub>x</sub>, are precursors to and aid in the formation of ozone. The rule revisions have been adopted by the State of Texas and

accompany this EAC SIP revision. Since these rule revisions apply to both the Austin and San Antonio EAC areas, EPA has taken action on them in a separate rulemaking (see 70 FR 15769, published March 29, 2005).

The rule revisions adopted as control measures in the San Antonio EAC CAP apply to all four counties in the EAC area and are as follows: Lowering the Stage I Vapor Recovery exemption to 25,000 gallons/month throughput, projected to reduce VOCs by 5.81 tpd; and degreasing requirements, projected to reduce VOCs by approximately 85% for degreasing (cold cleaning) sources.

Additional control measures that have been specified in the EAC CAP include: A statewide rule to reduce emissions of VOCs from portable fuel containers that spill, leak, and/or allow permeation (see 70 FR 7041, published February 10, 2005); the Texas Emissions Reduction Plan (TERP), a comprehensive set of grant programs to improve air quality in Texas, for which funds to reduce NO<sub>x</sub> by 2.5 tpd have been allocated to the San Antonio EAC area (see 70 FR 25008, published May 12, 2005); and Transportation Emission Reduction Measures (TERMs), which are transportation projects designed to reduce vehicle use, improve traffic flow, and/or reduce congested conditions throughout the EAC area, projected to reduce NO<sub>x</sub> by 0.32 tpd and VOCs by 0.92 tpd. These TERMs are described in detail in the TSD and will be incorporated by reference in the Code of Federal Regulations in the final approval action. Detailed information is necessary for emission reduction measures in the SIP to ensure that they are specific and enforceable as required by the Act and the EAC protocol. The description of these emission reduction measures includes the identification of each project, location, a brief project description, and emissions reductions for both VOCs and NO<sub>x</sub>. Though many of these TERMs have been completed, any unfinished projects will be completed by 2007.

In general, the control measures in this section meet the requirements of the EAC protocol: They are specific, quantified, permanent and will be federally enforceable when approved by EPA. In compliance with the next EAC program milestone, all control measures needed to demonstrate attainment will be implemented by December 31, 2005. The TSD contains detailed information on each of these control measures, as well as information on additional planned and locally-implemented measures whose expected emission reductions were not quantified or included in the photochemical

modeling, and therefore, are not necessary for the area to attain the standard in 2007.

According to the EAC protocol, the CAP must also include a component to address maintenance for growth at least 5 years beyond 2007, ensuring the area will remain in attainment of the 8-hour ozone standard through 2012. The San Antonio 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. The emissions inventory predicted an overall reduction in emissions through 2012: VOCs are estimated to be 23 percent lower and NO<sub>x</sub> are estimated to be 28 percent lower in 2007 than in 1999; and emissions predicted in 2012 are seven percent less than those modeled in 2007 for VOCs, and 22 percent less than those modeled in 2007 for NO<sub>x</sub>. Despite the growth estimated for the EAC area, federal emission standards are projected to substantially reduce emissions of NO<sub>x</sub> and VOCs in the newer fleet of vehicles. The federal measures include area measures (on-board refueling vapor recovery), as well as onroad and non-road (e.g., lawn and garden, recreational marine and locomotives) measures. State point source reductions in emissions from power plants, as well as the continuation of the smaller scale, locally-implemented control measures, will also contribute to the area's reductions in NO<sub>x</sub> and VOCs. See the TSD for a detailed list of these measures. 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 State has projected the area will be in attainment of the 8-hr ozone standard in 2007 and will remain in attainment through 2012.

To enhance the planning process, the TCEQ has committed to continue to work with local stakeholders to find additional measures to further reduce ozone precursor emissions, to ensure that the San Antonio EAC area will continue to maintain the 8-hour ozone standard through 2012. 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 2005. This semi-annual review will track and document, at a minimum, control strategy implementation and results, monitoring data and future plans. After review, additional control measures may be considered and adopted through revisions to this SIP, if necessary.

The elements that address maintenance for growth meet the EAC protocol. EPA has reviewed the

modeling and emission projections and proposes to approve the demonstration of attainment.

### **VII. What Happens If the Area Does Not Meet the EAC Milestones?**

On April 15, 2004, EPA designated the San Antonio EAC area as nonattainment for the 8-hour ozone standard and deferred the effective date of nonattainment until September 30, 2005. One of the principles of the EAC protocol is to provide safeguards to return areas to traditional SIP requirements should an area fail to comply with the terms of the compact. If, as outlined in our guidance and in 40 CFR 81.300, an EAC milestone is missed, we would take action to propose and promulgate a finding of failure to meet the milestone, and to withdraw the deferred effective date of the nonattainment designation, thereby triggering applicable statutory requirements.

### **VIII. Proposed Action**

EPA is proposing to approve the attainment demonstration, the San Antonio EAC CAP and the related control measures and incorporate these into the Texas SIP as a strengthening of the SIP. The modeling of ozone and ozone precursor emissions from sources in the four county San Antonio EAC area demonstrate that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007.

### **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 and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 (Pub. L. 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 under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), EPA's role is to approve state actions, 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 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.

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

Dated: May 13, 2005.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 05-10193 Filed 5-20-05; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2005-20738; Notice 1]

#### Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** Based on the agency's evaluation, the National Highway Traffic Safety Administration (NHTSA) denies a petition for rulemaking from Mercedes-Benz to amend the Federal lighting standard to permit the use of optional use of stoplamps that would flash under higher levels of deceleration. Mercedes-Benz has not demonstrated that this manufacturer-installed option would result in reduced crashes. NHTSA is denying the petition because it would take away from NHTSA the ability to use a potentially valuable rear signal for a higher safety purpose sometime in the future. NHTSA concludes that it would require more in-depth information than provided on the safety benefit of any such change before it would initiate a rulemaking on what rear signal lamp performance changes are appropriate or necessary to reduce the incidence or rear-end crashes.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590:

For Non-legal Issues: Mr. David Hines, Office of Crash Avoidance Standards, NVS-121, telephone (202) 366-5275, facsimile (202) 366-7002, electronic mail: [dhines@nhtsa.dot.gov](mailto:dhines@nhtsa.dot.gov).

For Legal Issues: Mr. George Feygin, Office of the Chief Counsel, NCC-112, telephone (202) 366-2992, facsimile (202) 366-3820.

**SUPPLEMENTARY INFORMATION:**

## Background

Section S5.5.10 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps reflective devices and associated equipment*, establishes the wiring requirements for lighting equipment in use, and requires that all lamps be wired to be steady burning, unless otherwise stated. All stoplamps must be steady burning when in use. Steady means free from change or variation. This means that they must not modulate, flash, or vary in size, area, intensity or appearance.

## Mercedes-Benz Petition

On April 4, 2003, Mercedes-Benz (MB) submitted a petition for rulemaking to revise Federal Motor Vehicle Safety Standard No. 108, *Lamps, reflective devices and associated equipment* to permit "flashing red brake lights<sup>1</sup>" to be installed on an optional basis as an emergency braking signal on motor vehicles. In support, MB provided information indicating that flashing stoplamps provide a non-ambiguous, intuitively interpreted signal of an emergency situation and it reduces braking reaction times (BRT) by up to 0.2 seconds compared with conventional stoplamps. MB believes that this is significant in terms of crash avoidance or crash severity reduction. Moreover, MB believes an even higher reduction (in BRT) can be expected in real world driving conditions, because it stated that its test subjects tended to react faster than real world drivers, since subjects who participate in experiments in a driving simulator or on a test track are generally more focused on the driving task than drivers on the road who are subject to many sources of distraction. Thus, MB claims that this reduction in BRT is likely to result in a meaningful reduction in the number and/or severity of rear end collisions.

## Analysis

Based on the NHTSA policy statement published in the **Federal Register**, November 4, 1998, Volume 63, Number 213, pages 59482-59492, the MB submission, in order to be treated as a petition must have substantive data purporting to show positive safety benefits from the new idea. MB did provide data showing that BRT would be improved. Thus, NHTSA granted the petition and set out to evaluate the data

<sup>1</sup> MB uses the term, flashing red brake lights for its desired device. Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices and Associated Equipment used the term stoplamps. Thus, Mercedes-Benz is asking that the Standard be amended to permit existing stoplamps to flash on an optional basis for the purpose of a high deceleration rate signal.