

Authority: 42 U.S.C. 7401 *et seq.*  
**Subpart VV—Virginia**  
 ■ 2. In § 52.2420, the entry for the Attainment Demonstration and the Early

Action Plan for the Roanoke MSA Early Action Compact Area in paragraph (e) is added at the end of the table to read as follows:

§ 52.2420 Identification of plan.  
 \* \* \* \* \*  
 (e) \* \* \*

EPA APPROVED NONREGULATORY AND QUASI-REGULATORY MATERIAL

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Attainment Demonstration and Early Action Plan for the Roanoke MSA Ozone Early Action Compact Area.	Botetourt County, Roanoke City, Roanoke County, and Salem City.	12/21/04, 2/15/05	8/17/05 [Insert <b>Federal Register</b> page number where the document begins].	

[FR Doc. 05-16294 Filed 8-16-05; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R03-OAR-2005-VA-0005; FRL-7954-4]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Attainment Demonstration for the Northern Shenandoah Valley Ozone Early Action Compact Area**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a revision to the Commonwealth of Virginia State Implementation Plan (SIP). This revision consists of an Early Action Compact (EAC) Plan that will enable the Northern Shenandoah Valley Ozone 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 or Act).

**DATES:** This final rule is effective on September 16, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03-OAR-2005-VA-0005. All documents in the docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Once in the system, select “quick search,” then key in the appropriate RME identification number. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy for public inspection 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:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On May 17, 2005 (70 FR 28260), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the attainment demonstration and the Early Action Plan (EAP) for the Northern Shenandoah Valley Ozone EAC Area, which consists of the City of Winchester and Frederick County. The formal SIP revision was submitted by the Virginia Department of Environmental Quality on December 20, 2004 and supplemented on February 15, 2005. Other specifics of the Commonwealth’s SIP revision for the Northern Shenandoah Valley Ozone EAC Area, and the rationale for EPA’s proposed action are explained in the NPR and will not be restated here. On June 16, 2005, EPA received adverse comments on its May 17, 2005 NPR. A summary of the comments submitted and EPA’s responses are provided in Section II of this document.

**II. Summary of Public Comments and EPA Responses**

*Comment:* Several commenters expressed support for the compact

process, the goal of clean air sooner, the incentives and flexibility the program provides for encouraging early reductions of ozone-forming pollution, and the deferred effective date of nonattainment designations.

*Response:* EPA acknowledges the comments of support for our final action.

*Comment:* One commenter opposes the approval of the SIP revision for the Northern Shenandoah Valley Ozone EAC Area because the Area is in violation of the 8-hour ozone standard. The commenter also states that the SIP revision provides for the deferment of a nonattainment designation until a future date, potentially as late as December 31, 2007, and relieves the Area of obligations under Title I, part D of the CAA. Although the commenter is supportive of the goal of addressing proactively the public health concerns associated with ozone pollution, the commenter believes that EPA does not have the legal authority to defer effective dates of designations or to allow areas to be relieved of obligations under Title I, part D of the CAA while they are violating the 8-hour ozone standard, or are designated nonattainment of that standard.

*Response:* EPA first announced the EAC process in a June 19, 2002 letter from Gregg Cooke, Administrator, EPA Region VI to Robert Huston, Texas Commission on Environmental Quality, followed by a November 14, 2002 memorandum from Jeffrey R. Holmstead, Assistant Administrator, EPA’s Office of Air and Radiation to the EPA Regional Administrators, entitled, “Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts.” EPA formalized the EAC process in the designation rulemaking on April 30, 2004 (69 FR 23858). In the designation rule, EPA designated 14 EAC areas as nonattainment, but deferred the

effective date of the designation until September 30, 2005. The EAC program gives local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the participating communities are serious in their commitment to control emissions from local sources earlier than the CAA would otherwise require. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental citizens' groups, a number of communities are discussing for the first time the need for regional cooperation in solving air quality problems that affect the health and welfare of its citizens. People living in these areas that realize reductions in pollution levels sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur. EPA believes this proactive approach involving multiple, diverse stakeholders is beneficial to the citizens of the area by raising awareness of the need to adopt and implement measures that will reduce emissions and improve air quality.

EPA disagrees with the comments that this action on the SIP revision for the Northern Shenandoah Valley Ozone EAC Area defers the nonattainment designation for this Area. In our May 17, 2005 NPR (70 FR 28260), EPA proposed approval of an attainment demonstration and EAP SIP revision for the Northern Shenandoah Valley Ozone EAC Area. This SIP revision includes an attainment demonstration which demonstrates attainment of the 8-hour ozone NAAQS in the Northern Shenandoah Valley Ozone EAC Area by December 31, 2007, and also demonstrates maintenance of the 8-hour NAAQS for five years following the attainment date. As noted in the proposed action, approval of the attainment demonstration and EAP constitutes one of several milestones that an area must meet in order to participate in the EAC process. While approval of this plan is a prerequisite for an extension of the deferred effective date of the designation of this Area, *see* 40 CFR 81.300(e)(3), neither the proposed approval of this SIP nor this final action approving the SIP purports to extend the deferral of the effective date of the nonattainment designation for this Area. In a separate rulemaking (69 FR 23858, April 30, 2004), EPA deferred the effective date of the air quality designations of all 14 EAC areas to September 30, 2005. In the April 30, 2004 final rule, EPA responded to comments received during the comment period for this final rule. In a separate

proposed rule (70 FR 33409, June 8, 2005), EPA proposed to extend the deferral of the effective date of the air quality designations for these 14 EAC areas. EPA will consider comments regarding its legal authority in the final rule associated with the June 8, 2005 proposed rule.

Regardless of whether EPA's separate actions deferring the effective date of the nonattainment designation for this Area are appropriate, EPA sees no basis to disapprove the attainment and maintenance plan. The provisions of the statute generally provide that areas must demonstrate attainment and maintenance of the NAAQS. *See e.g.*, CAA section 110(a)(1) (requiring areas to submit plans providing for "implementation, maintenance, and enforcement" of each NAAQS) and CAA section 172(c)(1) (requiring nonattainment areas to submit plans demonstrating attainment of the NAAQS). The commenter has provided no substantive reason why this plan does not demonstrate attainment and maintenance of the 8-hour standard. Therefore, this action approving the attainment demonstration and maintenance plan is appropriate.

### **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 "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 "regarding § 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 "to 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. Final Action**

EPA is approving the attainment demonstration and the EAP for the Northern Shenandoah Valley Ozone EAC Area. The modeling of the ozone and ozone precursor emissions from sources affecting the Northern Shenandoah Valley Ozone 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.

**V. Statutory and Executive Order Reviews**

*A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this 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 approves 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 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 approves 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 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 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.*).

*B. Submission to Congress and the Comptroller General*

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

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 17, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the attainment demonstration and the EAP for the Northern Shenandoah Valley Ozone EAC Area, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: August 9, 2005.

**Donald S. Welsh,**  
*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart VV—Virginia**

■ 2. In § 52.2420, the entry for the Attainment Demonstration and Early Action Plan for the Northern Shenandoah Valley Ozone Early Action Compact Area in paragraph (e) is added at the end of the table to read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA APPROVED NONREGULATORY AND QUASI-REGULATORY MATERIAL**

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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EPA APPROVED NONREGULATORY AND QUASI-REGULATORY MATERIAL—Continued

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Attainment Demonstration and Early Action Plan for the Northern Shenandoah Valley Ozone Early Action Compact Area.	City of Winchester and Frederick County.	12/20/04, 02/15/05	8/17/05 [Insert <b>Federal Register</b> page number where the document begins].	.....

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R03-OAR-2005-MD-0004; FRL-7954-2]

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a revision to the State of Maryland State Implementation Plan (SIP). This revision consists of an Early Action Compact (EAC) Plan that will enable the Washington County, Maryland Ozone 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 or Act).

**DATES:** This final rule is effective on September 16, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03-OAR-2005-MD-0004. All documents in the docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Once in the system, select "quick search," then key in the appropriate RME identification number. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy for public inspection during normal business hours at the Air

Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**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:**

**I. Background**

On May 17, 2005 (70 FR 28256), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the attainment demonstration and the Early Action Plan (EAP) for the Washington County Ozone EAC Area. The formal SIP revision was submitted by the Maryland Department of the Environment on December 20, 2004 and supplemented on February 28, 2005. Other specifics of the State's SIP revision for the Washington County Ozone EAC Area, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On June 16, 2005, EPA received adverse comments on its May 17, 2005 NPR. A summary of the comments submitted and EPA's responses are provided in Section II of this document.

**II. Summary of Public Comments and EPA Responses**

*Comment:* One commenter opposes the approval of the SIP revision for the Washington County Ozone EAC Area because the Area is in violation of the 8-hour ozone standard. The commenter also states that the SIP revision provides for the deferment of a nonattainment designation until a future date, potentially as late as December 31, 2007, and relieves the Area of obligations under Title I, part D of the CAA. Although the commenter is supportive of the goal of addressing proactively the public health concerns associated with ozone pollution, the commenter believes that EPA does not have the legal authority to defer effective dates of designations or to allow areas to be relieved of obligations under Title I, part

D of the CAA while they are violating the 8-hour ozone standard, or are designated nonattainment of that standard.

*Response:* EPA first announced the EAC process in a June 19, 2002 letter from Gregg Cooke, Administrator, EPA Region VI to Robert Huston, Texas Commission on Environmental Quality, followed by a November 14, 2002 memorandum from Jeffrey R. Holmstead, Assistant Administrator, EPA's Office of Air and Radiation to the EPA Regional Administrators, entitled, "Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts." EPA formalized the EAC process in the designation rulemaking on April 30, 2004 (69 FR 23858). In the designation rule, EPA designated 14 EAC areas as nonattainment, but deferred the effective date of the designation until September 30, 2005. The EAC program gives local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the participating communities are serious in their commitment to control emissions from local sources earlier than the CAA would otherwise require. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental citizens' groups, a number of communities are discussing for the first time the need for regional cooperation in solving air quality problems that affect the health and welfare of its citizens. People living in these areas that achieve reductions in pollution levels sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur. EPA believes this proactive approach involving multiple, diverse stakeholders is beneficial to the citizens of the area by raising awareness of the need to adopt and implement measures that will reduce emissions and improve air quality.

EPA disagrees with the comments that this action on the SIP revision for the Washington County Ozone EAC Area defers the nonattainment designation for this Area. In our May 17, 2005 NPR (70 FR 28256), EPA proposed approval of an