

of such property," to a donee described in section 170(c) (other than to a private foundation referred to in section 170(e)(1)(B)(ii)) may be allowed an initial charitable contribution deduction limited to the lesser of the taxpayer's basis or the fair market value of the qualified intellectual property. In addition, the taxpayer may be permitted to deduct certain additional amounts in the year of contribution or in subsequent taxable years based on a specified percentage of the qualified donee income received by the donee with respect to the qualified intellectual property.

Section 882(c)(1) of the Act amended section 6050L to require donees to make an annual information return that reports the qualified donee income for the taxable year and other specified information relating to qualified intellectual property contributions. The IRS expects to issue a new Form 8899 on which donees will report qualified donee income.

Under section 170(m)(8)(B), a donor must notify the donee of the donor's intent to treat a charitable contribution as a qualified intellectual property contribution under sections 170(m) and 6050L. For rules relating to donor notification see section 170(m)(8)(B) and Notice 2005-41, I.R.B. 2005-23 issued thereunder. Unless timely notice is provided, the donor has not made a qualified intellectual property contribution, and the donee has no reporting obligation under section 6050L or these regulations.

The donee is not required to make an information return if the qualified intellectual property produced no net income for the donee's taxable year. Under section 170(m)(5) and (m)(6), income received or accrued during the donee's taxable year is not treated as allocated to qualified intellectual property if such income is received or accrued after the 10-year period beginning on the date of the contribution or after the expiration of the legal life of the qualified intellectual property. Thus, the donee is not required to make a return with regard to a qualified intellectual property contribution for taxable years beginning after the expiration of the legal life of such qualified intellectual property. Additionally, section 6050L(b) requires a return only for specified taxable years of the donee, which years are defined in section 6050L(b)(2)(B) as any taxable year any portion of which is part of the 10-year period beginning on the date of contribution of the qualified intellectual property. Therefore, the donee is not required to make a return for taxable years beginning more than 10 years after

the date of the qualified intellectual property contribution.

Under these regulations, the donee generally is required to file an information return (with a copy of such return to the donor) on or before the last day of the first full month following the close of the donee's taxable year. See section 7701(a)(23) for the definition of taxable year. Transition rules are provided to take into account these filing requirements before a form is prescribed by the Internal Revenue Service and for donees' taxable years ending prior to or on the date of issuance of these regulations.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few, if any, small entities will be required to file under these regulations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Donnell M. Rini-Swyers, Office of Assistant Chief Counsel (Procedure & Administration).

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.6050L-2 is added to read as follows:

#### **§ 1.6050L-2 Information returns by donees relating to qualified intellectual property contributions.**

[The text of § 1.6050L-2 is the same as the text of § 1.6050L-2T published elsewhere in this issue of the **Federal Register**.]

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 05-10228 Filed 5-20-05; 8:45 am]

**BILLING CODE 4830-01-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R06-OAR-2005-TX-0011; FRL-7916-4]

#### **Approval and Promulgation of Air Quality Implementation Plans; Texas; Attainment Demonstration of the Austin Early Action Compact Area; Vehicle Inspection and Maintenance Program for Travis and Williamson Counties**

**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 include the modeled attainment demonstration of the 8-hour ozone standard and the Clean Air Action Plan (CAAP) for the Austin Early Action Compact (EAC) area. EPA is proposing approval of the photochemical modeling in support of the attainment demonstration of the 8-hour ozone standard within the Austin EAC area. EPA is proposing approval of the Austin EAC CAAP and related control measures. EPA is also proposing

approval of a vehicle inspection and maintenance (I/M) program for Travis and Williamson Counties, which are within the Austin EAC area. EPA is proposing approval of 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 ensure attainment 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-0011, 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/r6comment.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-0011. 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://](http://docket.epa.gov/rmepub/)

[docket.epa.gov/rmepub/](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 Austin 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 is the vehicle I/M program we are proposing to approve?
- VIII. What happens if the area does not meet the EAC milestones?
- IX. Proposed Action
- X. 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. The revisions include an attainment demonstration of the 8-hour ozone standard within the Austin EAC area and the Austin EAC CAAP and related control measures. The EAC is a voluntary agreement between the TCEQ, the EPA, the five counties of Bastrop, Caldwell, Hays, Travis and Williamson, and the cities of Austin, Bastrop, Elgin, Lockhart, Luling, Round Rock and San Marcos. The intent of this agreement, known as the Austin EAC or the EAC, is to reduce ozone pollution and thereby maintain the 8-hour ozone standard. The EAC sets forth a schedule to develop technical information about local ozone pollution, and adopt and implement a clean air action plan, consisting of emissions control measures to ensure that the EAC area achieves compliance with the 8-hour ozone standard by December 31, 2007.

The revisions also include a vehicle inspection and maintenance (I/M) program for Travis and Williamson Counties, within the Austin EAC area. The I/M rule revision is an emission control strategy that will assist the

Austin EAC area in achieving the 8-hour ozone standard by December 31, 2007.

The EPA designated the Austin EAC area as attainment for the 8-hour ozone standard on April 30, 2004 (69 FR 23858). During the summer of 2004 the Austin EAC area monitored a violation of the Federal 8-hour ozone standard. The design value (three year average of the annual fourth highest 8-hour ozone readings) for 2002–2004 was 85 parts per billion (ppb). The TCEQ submitted these revisions to the SIP as preventive and progressive measures to avoid continued violation, to ensure long term maintenance of the 8-hour ozone standard within the affected area, and to prevent a redesignation to nonattainment. Section VI of this rulemaking describes the control measures that will be implemented within the Austin 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. Areas that adopted EACs must establish a clean air action plan, meet other established milestones and attain the 8-hour ozone standard by December 31, 2007. 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 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 Austin EAC Attainment Demonstration?

In support of this proposal, the State conducted an ozone photochemical modeling study developed for the Austin EAC area. The photochemical modeling attainment demonstration includes: (1) analyses which estimate whether selected emissions reductions will result in ambient concentrations that meet the 8-hour ozone standard in the Austin EAC area and (2) an identified set of measures which will result in the required emissions

reductions. See the Technical Support Document (TSD) for a detailed description of the control measures included in the model. 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, which was supported by results of photochemical modeling and technical documentation, predicts that the 8-hour ozone standard should be attained in the Austin EAC area by 2007 and maintained through 2012.

We believe this study meets EPA's 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 B of our TSD for more information about this modeling study and EPA's evaluation of these items. The modeling submitted in support of this proposal demonstrates that the Austin EAC area would be in attainment with the 8-hour ozone NAAQS in 2007. The modeling results for the Austin EAC area predict a maximum ozone design value of 83 ppb in 2007. This predicted maximum design value is below the 8-hour ozone limit of 85 ppb. See section VI of this document for a list of measures that will be implemented within the Austin EAC area. We are proposing to approve the 8-hour ozone attainment demonstration for the Austin EAC area.

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

We are proposing to approve this EAC SIP submittal because implementation of the requirements in this EAC will help ensure the Austin EAC area's compliance with the 8-hour ozone standard by December 31, 2007 and maintenance of that standard through 2012. We have determined that the control measures included in the attainment demonstration are quantified, surplus, permanent, and, if approved, will be Federally enforceable SIP revisions. We have reviewed the submittals and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol. Our TSD contains detailed information concerning this rulemaking action.

Approving Austin's CAAP into the SIP will also mean that measures and controls identified in the CAAP become Federally enforceable and the Austin EAC communities will start to benefit from reductions in air pollution. See section VI of this rulemaking action for the description of air pollution control

measures. EPA has determined that the State and local area have fulfilled the milestones and obligations of the EAC Program to date.

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

The attainment demonstration relied upon existing state and Federal requirements as well as new state and local control strategies, each of which will contribute to reductions in nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) in the Austin EAC area. NO<sub>x</sub> and VOCs are precursors to and aid in the formation of ozone. While the implementation of the local control strategies is estimated to reduce NO<sub>x</sub> and VOCs, the Austin EAC area has demonstrated attainment through the implementation of Federal and statewide rules, without including the effects of the local control measures in the photochemical modeling.

To help ensure the Austin EAC area's compliance with the 8-hour ozone standard by December 31, 2007, the CAAP includes State rule revisions as well as local control measures. EPA is acting on the vehicle inspection and maintenance rule in this proposal and has taken separate actions on the remaining revisions, including lowering the Stage I Vapor Recovery exemption, degreasing requirements and cutback asphalt restrictions (see 70 FR 15769, published March 29, 2005) and idling restrictions (see 70 FR 18308, published April 11, 2005), the gas can rule (see 70 FR 7041, published February 10, 2005), and the Texas Emission Reduction Plan (TERP, see 70 FR 25008, published May 12, 2005).

The control measures in the Austin EAC CAAP are expected to provide the following reductions: annual vehicle I/M program in Travis and Williamson Counties, projected to reduce NO<sub>x</sub> by 3.22 tons per day (tpd) and VOCs by 3.83 tpd; lowering the Stage I Vapor Recovery exemption to 25,000 gallons/month throughput in the five county EAC area, projected to reduce VOCs by 4.88 tpd; degreasing requirements in the five county EAC area, projected to reduce VOCs by 5.55 tpd or 59.2% for degreasing (cold cleaning) sources; seasonal cutback asphalt restrictions in the five county EAC area, projected to reduce VOCs by 1.03 tpd or 38.4% for asphalt applications; and a rule prohibiting heavy-duty diesel vehicle idling in jurisdictions that sign enforcement agreements with the TCEQ, projected to reduce NO<sub>x</sub> by 0.67 tpd when adopted throughout the EAC area. See the TSD for further details.

Additional control measures that have been included in the photochemical

modeling and will be implemented throughout the EAC area include: A statewide rule to reduce emission of VOCs from portable fuel containers that spill, leak, and/or allow permeation, projected to reduce VOCs by 0.89 tpd (70 FR 7041); the TERP, a comprehensive set of grant programs to improve air quality in Texas, for which funds to reduce NO<sub>x</sub> by 2 tpd have been allocated to the Austin EAC area (70 FR 25008); 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.

The specific TERMs have been described in detail in Appendix L of the State's SIP submittal 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 TERMs description in the SIP includes identification of each project, location, a brief project description, implementation date, status of project, and emissions reductions for both VOCs and NO<sub>x</sub>. The TERMs are projected to reduce NO<sub>x</sub> by 0.72 tpd and VOCs by 0.83 tpd and we here propose approval of the TERMs control measure.

The CAAP includes additional local control measures that were not included in the attainment demonstration. Power plant emission reductions which will be effective by December 31, 2005 are projected to reduce NO<sub>x</sub> by 341 tons per year (tpy) in the EAC area. These reductions are scheduled for the Sim Gideon, Holly Street and Decker Lake facilities in Bastrop and Travis Counties and are in addition to those required by existing state-wide NO<sub>x</sub> rules. Acceleration of emission reductions required by a Flexible Air Permit from October 2012 to December 31, 2006 in Fayette County (on the east border of the EAC area) is projected to reduce NO<sub>x</sub> by 972 tpy. Improved controls at the University of Texas facility in Travis County, scheduled for implementation by December 31, 2006, are estimated to reduce NO<sub>x</sub> by an additional 353 tpy.

The control measures which were included in the attainment demonstration 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, each of the control measures included in the attainment demonstration are scheduled to be implemented on or before

December 31, 2005. The TSD contains detailed information on each of these control measures, as well as information on additional locally-implemented measures whose expected emission reductions have not been quantified or included in the photochemical modeling, but will assist the area in attainment and maintenance of the 8-hour ozone standard in 2007.

According to the EAC protocol, the CAAP 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 Austin 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 and 2015: for point sources, VOC emissions are predicted to be 37 percent lower and NO<sub>x</sub> emissions are estimated to be 42 percent lower in 2012 than 1999. Area sources are projected to increase by 14.2% from 1999 to 2012. For on-road mobile sources, VOC emissions (without the I/M program) are predicted to be 48 percent lower and NO<sub>x</sub> emissions are estimated to be 68 percent lower in 2012 than 1999; with the I/M program, VOC emissions are predicted to be 58 percent lower and NO<sub>x</sub> emissions are estimated to be 74 percent lower in 2012 than 1999. For non-road mobile sources, emissions of VOCs are estimated to be 10 percent lower and NO<sub>x</sub> emissions are estimated to be 4 percent higher in 2012 than 1999. Despite the growth estimated for the EAC area, the more stringent Federal emission standards are projected to substantially reduce emissions of NO<sub>x</sub> and VOCs in the newer fleet of vehicles. The Federal controls include area measures (e.g., auto body refinishing) as well as onroad and non-road (e.g., lawn and garden, recreational marine, locomotives) measures. State point source reductions in emissions from power plants, as well as 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-hour ozone standard in 2007 and will remain in attainment through 2012 and 2015. The elements of the demonstration that address maintenance for growth meet the EAC protocol.

To enhance the air quality 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 Austin EAC area will 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.

EPA has determined that the control measures included in the attainment demonstration are consistent with the requirements of the EPA Protocol for EAC control strategies in that the measures are specific, quantified, permanent, and, if approved by EPA, will be Federally enforceable SIP revisions. In accordance with the EAC, the signatories will review all EAC activities and report results in their semi-annual reports. The control measures in the CAAP approved through this SIP revision will provide reductions in NO<sub>x</sub> and VOCs in the Austin EAC area. 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. EPA proposes to approve the demonstration of attainment, the CAAP and related control measures.

#### **VII. What Is the Vehicle I/M Program We Are Proposing To Approve?**

Vehicle I/M programs focus on reducing emissions of NO<sub>x</sub> and VOCs through automobile inspections that lead to repair and maintenance of vehicles covered by the program. I/M programs are mandatory requirements of the Federal CAA Section 182 for certain ozone nonattainment areas. However, state and local governments may initiate I/M programs voluntarily in order to reduce emissions of NO<sub>x</sub> and VOCs from automobiles. Texas has adopted rules in Chapter 114, Subchapter C for an I/M program that applies only in EAC areas where participation is requested by the participating county and the most populous municipality in the county. This EAC I/M program is distinct from the State's SIP-approved I/M program in Chapter 114, Subchapter B applicable to nonattainment areas. See Attachment A of our TSD for further details. Resolutions requesting EAC I/M

programs were approved and signed by Travis County on March 23, 2004, the City of Austin on March 25, 2004, Williamson County on March 23, 2004, and the City of Round Rock on March 25, 2004.

The EAC I/M program becomes effective September 1, 2005. All gasoline-powered motor vehicles between 2 and 24 years old, registered and primarily operated in Travis and Williamson Counties, are required to have an annual emissions inspection starting with the first safety inspection. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Transportation are excluded from this program. Test-on-resale is required for title transfer within the two counties if the sale vehicle is registered in a non-I/M county, with the exception of all 1996 or newer vehicles with less than 50,000 miles. All subject 1996 and newer model year vehicles equipped with On-board Diagnostic (OBD) systems will undergo EPA OBD test procedures. All pre-1996 subject vehicles will undergo a two-speed idle (TSI) test. All test facilities must offer both emission tests. Test facilities can be either test and repair or test only.

The emissions inspection fee will not exceed \$16. A portion of each emission inspection fee goes to the Department of Public Safety for program oversight with regard to compliance and enforcement. Program funds are also made available for these counties to participate in the Low Income Repair Assistance Program if they adopt that program. Vehicle inspection certificate in the EAC area counties is mandated, along with provisions for limited exclusions, waivers and extensions, and prohibitions of program fraud.

MOBILE6 was used to calculate emission reductions that this program will achieve. The program is projected to reduce VOCs by 3.83 tons per day and NO<sub>x</sub> by 3.22 tons per day, which is slightly more than 10% for each pollutant from this source category (gas-powered automobiles). See the TSD for an in-depth analysis. A technical review of the I/M rule revisions resulted in a recommendation to approve the rule revisions with one exclusion, which follows.

To be consistent with our previous approval of Texas' I/M program for nonattainment areas, we are not approving section 114.82(b) as part of the Texas EAC I/M program. This provision places an additional reporting burden upon commanders at Federal facilities regarding affected Federal

vehicles, which is not imposed upon any other affected non-federal vehicle. See 66 FR 57261 for further details.

The I/M program we are proposing to approve today is not being submitted to meet I/M requirements of the CAA as defined in EPA's final I/M rule published November 5, 1992 at 57 FR 52950. Rather, this rule is being submitted for approval into the Texas SIP as part of the State's EAC control strategies to reduce emissions of NO<sub>x</sub> and VOCs from automobiles in the Austin EAC area. Accordingly, this rule is not being reviewed pursuant to requirements set forth in EPA's final I/M rule at 40 CFR part 51, subpart S, but rather as a strengthening of the SIP. EPA's review of the material submitted indicates that the rule is approvable to achieve emission reductions within a range of those represented in the State's modeling study and attainment demonstration. EPA is proposing to approve the SIP revision as stated above, to include vehicle I/M for Travis and Williamson Counties.

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

The measures outlined in this submittal provide sufficient information to conclude that the Austin EAC area will complete each of the EAC milestone requirements, including attainment of the 8-hour standard in 2007. However, 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 and the area is still in attainment of the 8-hour ozone standard, we would take action to propose and promulgate a finding of failure to meet the milestone, but the ozone attainment designation and the approved SIP elements would remain in effect. If the design value for the EAC area exceeds the 8-hour ozone standard and the area has missed an EAC milestone, we would also consider factors in section 107(d)(3)(A) of the Act in deciding whether to redesignate the area to nonattainment.

#### **IX. Proposed Action**

EPA is proposing to approve the vehicle I/M program for Travis and Williamson Counties. In addition, EPA is proposing to approve the attainment demonstration, the Austin EAC CAAP, and the related control measures and incorporate these revisions into the Texas SIP as a strengthening of the SIP. We have determined that the CAAP control measures included in the attainment demonstration are

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,