

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 requirement, 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 approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule to approve Delaware's transportation conformity regulation 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, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

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

Dated: October 29, 2007.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2007-0215; FRL-8493-3]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; 110(a)(1) 8-Hour Ozone Maintenance Plan and Amendments to the 1-Hour Ozone Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by West Virginia. These revisions pertain to: the maintenance plan prepared by West Virginia to maintain the 8-hour national ambient air quality standard (NAAQS) for ozone in Greenbrier County, which is designated attainment for the ozone NAAQS; and two amendments to the existing 1-hour ozone maintenance plan, which include (a) removal of the obligation to submit a maintenance plan for the 1-hour NAAQS eight years after approval of the initial 1-hour maintenance plan, and (b) removal of the State's obligation to implement contingency measures upon a violation of the 1-hour NAAQS. The purpose of this proposed approval is to ensure Federal enforceability of the state air program plan and to maintain consistency between the State-adopted plan and the approved SIP. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before December 7, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0215, by one of the following methods:

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

B. *E-mail:* powers.marilyn@epa.gov.

C. *Mail:* EPA-R03-OAR-2007-0215, Marilyn Powers, Acting Branch Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2007-0215. EPA's policy is that all comments received will be included in the public

docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Irene Shandruk, (215) 814-2166, or by e-mail at [shandruk.irene@epa.gov](mailto:shandruk.irene@epa.gov).

**SUPPLEMENTARY INFORMATION:** On November 29, 2006, the West Virginia Department of Environmental Protection (WVDEP) submitted a revision to its State Implementation Plan (SIP) for

approval of the section 110(a)(1) 8-hour Ozone Maintenance Plan for Greenbrier County, West Virginia, and for concurrent approval of two amendments to the existing 1-hour ozone maintenance plan.

## I. Background

Section 110(a)(1) of the Clean Air Act (CAA) requires, in part, that states submit to EPA plans to maintain any NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS but attainment for the 8-hour ozone NAAQS submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS. EPA established June 15, 2007, three years after the effective date of the initial 8-hour ozone designations, as the deadline for submission of plans for these areas.

On May 20, 2005, EPA issued guidance that applies, in part, to areas that are designated attainment/unclassifiable for the 8-hour ozone standard and that had an approved 1-hour ozone maintenance plan. The purpose of the guidance, referred to as section 110(a)(1) guidance, is to assist the states in the development of a SIP which addresses the maintenance requirements found in section 110(a)(1) of the CAA. There are five components of the section 110(a)(1) maintenance plan which are: (1) An attainment inventory, which is based on actual typical summer day emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) for a ten-year period from a base year as chosen by the state; (2) a maintenance demonstration which shows how the area will remain in compliance with the 8-hour ozone standard for 10 years after the effective date of designations (June 15, 2004); (3) a commitment to continue to operate air quality monitors; (4) a contingency plan that will ensure that a violation of the 8-hour ozone NAAQS is promptly addressed; and (5) an explanation of how the State will track the progress of the maintenance plan.

## II. Summary of SIP Revision

The WVDEP 8-hour ozone maintenance plan addresses the components of the section 110(a)(1) 8-hour ozone maintenance plan as outlined in EPA's May 20, 2005 guidance. West Virginia has requested approval of its 8-hour ozone maintenance plan for Greenbrier County, as well as concurrent approval of two amendments to its existing 1-hour ozone maintenance plan.

*Emissions Inventory:* An emissions inventory is an itemized list of emission

estimates for sources of air pollution in a given area for a specified time period. WVDEP has provided a comprehensive and current emissions inventory for NO<sub>x</sub> and VOCs. WVDEP has chosen to use 2002 as the base year from which it will project emissions. The maintenance plan also includes an explanation of the methodology used for determining the anthropogenic (area and mobile sources) emissions. There are no Title V point sources located in Greenbrier County, so a 2002 point source inventory was not compiled. The inventory is based on emissions from a typical ozone season day. The term "typical" refers to emissions being emitted during a typical weekday during the months where ozone concentrations are typically the highest.

*Maintenance Demonstration and Tracking Progress:* With regard to demonstrating continued maintenance of the 8-hour ozone standard, West Virginia projects that the total emissions from Greenbrier County will decrease during the ten-year maintenance period. WVDEP has projected emissions for 10 years from the effective date of initial designations, or 2014. In 2002, the total anthropogenic emissions in Greenbrier County were 7.7 tons/ozone season day for VOCs and 7.4 tons/ozone season day for NO<sub>x</sub>. The projected 2014 anthropogenic emissions from Greenbrier County are 7.0 tons/ozone season day for VOCs and 4.9 tons/ozone season day for NO<sub>x</sub>. As such, the plan demonstrates that, from an emissions projections standpoint, emissions are projected to decrease.

It is important to note that the formation of ozone is dependent on a number of variables which cannot be estimated through emissions growth and reduction calculations. A few of these variables include weather and the transport of ozone precursors from outside the maintenance area. In the Section 110(a)(1) maintenance plan, WVDEP had indicated that the state will track the progress of the maintenance plan by updating the emissions inventory for Greenbrier County approximately every three years. The emissions inventory update will include point, area, and mobile emissions. Information from these future updates will be compared with the projected growth estimates for the 2002 base inventory data to track maintenance of the standard.

*Ambient Monitoring:* With regard to the ambient air monitoring component of the maintenance plan, West Virginia commits to continue operating air quality monitoring stations in accordance with 40 CFR Part 58 throughout the maintenance period to

verify maintenance of the 8-hour ozone standard, and will submit quality-assured ozone data to EPA through the AIRS system.

*Contingency Measures:* EPA interprets Section 110(a)(1) of the CAA to require that the state develop a contingency plan that will ensure that any violation of a NAAQS is promptly corrected. The purposes of the contingency measures, as outlined in West Virginia's maintenance plan, is to accordingly select and adopt one or more measures outlined in the maintenance plan so as to assure continued attainment in the event that a violation of the ozone NAAQS is measured. Violation of the 8-hour ozone standard would trigger one or more of the control measures outlined in the plan.

Approval of two amendments to West Virginia's existing 1-hour maintenance plan has also been requested by WVDEP. Section 175A(b) requires that maintenance plans be updated. The 1-hour maintenance plan for Greenbrier County extends to 2005, but no update has been developed. West Virginia identifies the most important reason for this being that available resources are being devoted to attainment and maintenance of the 8-hour standard since the 8-hour standard is considered by the State to be more protective than the former 1-hour standard upon which the current maintenance plan is based. As such, West Virginia is amending this existing maintenance plan, which is codified at 40 CFR 52.2420(e), for the Greenbrier County 1-hour maintenance area by removing the State's obligation to submit a maintenance plan for the 1-hour NAAQS eight years after approval of the initial 1-hour maintenance plan, and is requesting approval of these amendments.

The WVDEP is requesting approval of the section 110(a)(1) 8-hour ozone maintenance plan for Greenbrier County, West Virginia as a revision to its SIP. This plan demonstrates how the State intends to maintain the 8-hour NAAQS for ozone. Additionally, WVDEP requested that pursuant to 40 CFR 51.905(e)(1), EPA concurrently approve two amendments to the existing 1-hour ozone maintenance plan: (1) Removal of the obligation to submit a maintenance plan for the 1-hour NAAQS 8 years after approval of the initial 1-hour maintenance plan; and (2) removal of the State's obligation to implement contingency measures upon a violation of the 1-hour NAAQS. West Virginia's SIP submittal meets the CAA requirements for SIP submittals.

### III. Proposed Action

EPA's review of this material indicates that West Virginia has addressed the components of a maintenance plan pursuant to EPA's May 20, 2005 guidance. EPA is proposing to approve the West Virginia SIP revision for Greenbrier County, which was submitted on November 29, 2006. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 CAA. Thus, the requirements of

section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This action proposing approval of the section 110(a)(1) 8-hour Ozone Maintenance Plan for Greenbrier County, West Virginia, and for concurrent approval of two amendments to the existing 1-hour ozone maintenance plan does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

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

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

Dated: October 29, 2007.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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