

§ 804(3)(A) of the APA as amended by SBREFA, and thus exempt from the congressional submission requirements, because this rule applies only to named States. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of "particular applicability."

#### *F. Paperwork Reduction Act*

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *G. Judicial Review*

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of December 26, 2000.

Dated: December 19, 2000.

**Robert Perciasepe,**

*Assistant Administrator, Office of Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[DC047-2024; FRL-6921-3]

#### **Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology for Oxides of Nitrogen**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision requires major sources of nitrogen oxides (NO<sub>x</sub>) in the District to implement reasonably available control technology (RACT). EPA is approving these revisions to the District's SIP in accordance with the requirements of the Clean Air Act.

**EFFECTIVE DATE:** This final rule is effective on January 25, 2001.

**ADDRESSES:** Copies of the documents relevant to this action are available 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; the Air and Radiation Docket and Information Center, U.S. Environmental

Protection Agency, 401 M Street, SW., Washington, DC 20460; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

#### **FOR FURTHER INFORMATION CONTACT:**

Kelly L. Bunker, (215) 814-2177 or by e-mail at bunker.kelly@epamail.epa.gov.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Pursuant to section 182 of the Clean Air Act (CAA), ozone nonattainment areas classified as serious or above are required to implement RACT for all major sources of NO<sub>x</sub> by no later than May 31, 1995. The major source size is determined by the classification of the nonattainment area and whether it is located in the Ozone Transport Region which was established by the CAA. Because the District of Columbia is classified as a serious ozone nonattainment area, major stationary sources are defined as those that emit or have the potential NO<sub>x</sub> to emit 50 tons or more of NO<sub>x</sub> per year.

On January 13, 1994, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), now known as the District of Columbia Department of Public Health (DCPH), submitted revisions to its State Implementation Plan (SIP) that included a new regulation, Section 805, entitled "Reasonably Available Control Technology for Major Stationary Sources of Oxides of Nitrogen," to Subtitle I (Air Quality) of Title 20 of the District of Columbia Municipal Regulations (DCMR). Section 805 requires sources which emit or have the potential to emit 50 tons or more of NO<sub>x</sub> per year to comply with RACT requirements by May 31, 1995.

On February 25, 1999 (64 FR 9272), EPA published a direct final rulemaking (DFR) conditionally approving the District of Columbia's NO<sub>x</sub> RACT regulation found in section 805 of Title 20 of the DCMR. A companion notice of proposed rulemaking (NPR) proposing conditional approval of the District of Columbia's NO<sub>x</sub> RACT regulation was published in the Proposed Rules section of the same February 25, 1999 **Federal Register** (64 FR 9289). In the February 25, 1999 DFR, EPA stated that if adverse comments were received within 30 days of its publication, EPA would publish a document announcing the withdrawal of that DFR before its effective date. Because EPA did receive adverse comments on the February 25, 1999 DFR within the prescribed time frame, we withdrew it. Under these circumstances the companion NPR remained in effect and interested parties

submitted comments pursuant to that NPR. The withdrawal of the DFR document appeared in the **Federal Register** on April 13, 1999 (70 FR 17982).

On August 28, 2000, the District of Columbia submitted proposed revisions to EPA, for parallel processing, to Section 805 of Title 20 of the DCMR as a supplement to its January 13, 1994 SIP submittal. These revisions correct the deficiencies identified in the February 25, 1999 notice. On September 28, 2000 (65 FR 58249), EPA published a new NPR which withdrew its February 25, 1999 proposed conditional approval and instead proposed full approval of the District's NO<sub>x</sub> RACT regulation as amended by its August 28, 2000 submittal. The specific requirements of the District of Columbia's NO<sub>x</sub> RACT regulation and the rationale for EPA's approval are explained in the September 28, 2000 NPR and will not be restated here. No public comments were received on the September 28, 2000 NPR.

These proposed revisions were approved by the District of Columbia City Council on October 17, 2000, adopted on October 26, 2000 and became permanent and effective on December 8, 2000. EPA is fully approving the District of Columbia's NO<sub>x</sub> RACT regulation found in section 805 of Title 20 of the DCMR submitted on January 13, 1994 and supplemented on August 28, 2000, October 26, 2000 and December 8, 2000.

##### **II. Final Action**

EPA is fully approving the District of Columbia's NO<sub>x</sub> RACT regulation found in section 805 of Title 20 of the DCMR. This SIP revision was submitted by the District of Columbia on January 13, 1994 and supplemented with a revised version of section 805 of Title 20 of the DCMR submitted for parallel processing on August 28, 2000. The revised regulations were adopted by the District of Columbia on October 26, 2000 and became permanent and effective in the District on December 8, 2000. The District submitted the fully adopted and effective revised version of section 805 of Title 20 of the DCMR to EPA on December 8, 2000. The regulations formally adopted were exactly the same as the proposed version upon which EPA proposed approval. Approval of this SIP revision is necessary for full approval of the attainment demonstration SIP for the Metropolitan Washington, DC ozone nonattainment area.

### III. Administrative Requirements

#### 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. 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will 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), because it 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 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a

prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this 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 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 February 26, 2001. 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 District of Columbia’s NO<sub>x</sub> RACT regulation 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, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: December 14, 2000.

**Bradley M. Campbell,**

*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 J—District of Columbia

2. In § 52.470, an entry for Chapter 8, Section 805 is added in numerical order in the “EPA Approved Regulations in the District of Columbia SIP” table in paragraph (c) to read as follows:

#### § 52.470 Identification of plan.

\* \* \* \* \*

(c) EPA approved regulations.

#### EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Comments
Chapter 8	Asbestos, Sulfur and Nitrogen Oxides.			
Section 805 .....	Reasonably Available Control Technology For Major Stationary Sources of Oxides of Nitrogen.	11/19/93 and 12/8/00.	Type: 12/26/00.	

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[AZ063-0034; FRL-6916-4]

**Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval of revisions to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). This action was proposed in the **Federal Register** on

July 24, 2000 and concerns volatile organic compound (VOC) emissions from stationary storage tanks, dock loading and leakages from pumps and compressors. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action approves local rules that regulate these emission sources but identifies several rule deficiencies. There are no sanctions associated with this action as PCAQCD is in attainment with the ozone NAAQS. **EFFECTIVE DATE:** This rule is effective on January 25, 2001.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200

Pennsylvania Avenue, NW., Washington DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, (P.O. Box 987), Florence, AZ 85232.

**FOR FURTHER INFORMATION CONTACT:** Andrew Steckel, Rulemaking Office (AIR-4), U.S. EPA, Region IX, (415) 744-1185.

**SUPPLEMENTARY INFORMATION:**

Throughout this document, "we," "us" and "our" refer to EPA.

**I. Proposed Action**

On July 24, 2000 (65 FR 45566), EPA proposed a limited approval of the following rules that were submitted for incorporation into the Arizona SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
PCAQCD .....	5-18-740	Storage of Volatile Organic Compounds—Organic Compound Emissions .....	02/22/95	11/27/95
PCAQCD .....	5-19-800	General .....	02/22/95	11/27/95
PCAQCD .....	5-24-1055	Pumps and Compressors—Organic Compound Emissions .....	02/22/95	11/27/95

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. However, we cannot grant a full approval because the rules contain deficiencies which conflict with section 110 of the Act. Our proposed action contains more information on the basis for this rulemaking, but the major deficiency that we identified is that the rules do not adequately specify test methods, recordkeeping, monitoring, and other requirements needed to make the rules enforceable.

**II. Public Comments and EPA Responses**

EPA's proposed action provided a 30-day public comment period. During this period, we received a letter dated August 22, 2000 from Donald Gabrielson of PCAQCD. This letter clarified that EPA's proposed action "will not trigger a requirement for additional revisions of these rules." EPA concurs with this statement. The letter also requested that EPA explicitly delete old PCAQCD rules R7-3-3.1, 3-2 and 3-3 when approving new PCAQCD rules 5-18-740, 19-800 and 24-1055. As stated below, EPA's final action to approve the new rules will supercede the old rules.

**III. EPA Action**

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the Arizona SIP, including those provisions identified as deficient and will supercede Rules 7-3-3.1, 7-3-3.2, and 7-3-3.3 from the SIP. Note that the submitted rules have been adopted by the PCAQCD, and EPA's final limited approval does not prevent PCAQCD from enforcing them. Because this is an attainment area, EPA is not simultaneously finalizing a limited disapproval of the rules. As a result, no sanctions clocks under section 179 or FIP clocks under section 110(c) are associated with this action.

**IV. Administrative Requirements****A. Executive Order 12866**

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

**B. Executive Order 13045**

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety

Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate health or safety risks.

**C. Executive Order 13084**

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the