

House of the Congress and to the Comptroller General of the United States. CRA section 808 provides that the issuing agency may make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. EPA has made such a good cause finding, including the reasons therefor, and has established the date of publication as the effective date. As stated previously, 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 action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 22

Environmental protection,
Administrative practice and procedure,
Courts.

Dated: December 20, 2004.

Richard McKeown,
Chief of Staff.

■ 40 CFR Part 22 is amended as follows:

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 7 U.S.C. 136(l); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g-3(g), 6912, 6925, 6928, 6991e and 6992d, 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

■ 2. Section 22.5 is amended by adding a sentence after the second sentence in paragraph (a)(1) to read as follows:

§ 22.5 Filing, service, and form of all filed documents, business confidentiality claims.

(a) * * *

(1) * * * Documents filed in proceedings before the Environmental Appeals Board shall either be sent by U.S. mail (except by U.S. Express Mail) to the official mailing address of the Clerk of the Board set forth at § 22.3 or delivered by hand or courier (including deliveries by U.S. Postal Express or by a commercial delivery service) to Suite 600, 1341 G Street, NW., Washington, DC 20005. * * *

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■ 3. Section 22.30 is amended by removing the first two sentences of paragraph (a)(1) and adding three new sentences in their place to read as follows:

§ 22.30 Appeal from or review of initial decision.

(a) * * *

(1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. Appeals sent by U.S. mail (except by U.S. Postal Express Mail) shall be addressed to the Environmental Appeals Board at its official mailing address: Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Appeals delivered by hand or courier (including deliveries by U.S. Postal Express Mail or by a commercial delivery service) shall be delivered to Suite 600, 1341 G Street, NW., Washington, DC 20005. * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03-OAR-2004-DC-0003; FRL-7853-9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Excess Volatile Organic Compound and Nitrogen Oxides Emissions Fee Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the District of Columbia (District) State Implementation Plan (SIP) for ozone. The rule requires major stationary sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) in the District, which is part of the Metropolitan Washington DC Severe Ozone Nonattainment Area, to pay a fee to the District if the area fails to attain the one-hour national ambient air quality standard for ozone by November 15, 2005. The fee must be paid beginning in 2006, and in each calendar year thereafter, until the area is redesignated to attainment for the pollutant ozone. The District of Columbia submitted this rule on April 16, 2004, pursuant to the requirements of Section 110 of the Clean Air Act.

DATES: This rule is effective on February 28, 2005, without further notice, unless EPA receives adverse written comment by January 27, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the

Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2004-DC-0003 by one of the following methods:

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

B. Agency Web site: <http://www.docket.epa.gov/rmepub/RME>, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: morris.makeba@epa.gov.

D. Mail: R03-OAR-2004-DC-0003, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. 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 RME ID No. R03-OAR-2004-DC-0003. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, 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 RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web sites are 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 RME or [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 RME index at <http://www.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 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 material to be incorporated by reference are available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, 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: Catherine L. Magliocchetti, (215) 814-2174, or by e-mail at magliocchetti.catherine@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to EPA. This supplementary information is organized as follows.

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I. What Final Action Is EPA Taking?

EPA is approving a SIP revision that revises the District of Columbia’s ozone SIP. The SIP revision requires major stationary sources of VOC and NO_x in the District of Columbia, which is part of the Metropolitan Washington DC Severe Ozone Nonattainment Area (Area), to pay a fee to the District if the Area fails to attain the national ambient air quality standard (NAAQS) for ozone by November 15, 2005. The fee must be paid beginning in 2006 and in each calendar year thereafter, until the Area is redesignated to attainment for the pollutant ozone. We are approving this rule because it is consistent with the requirements of the Clean Air Act (Act).

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and we anticipate no adverse comment, since no comments were received during the District’s regulatory process. However, in the “Proposed Rules” section of today’s **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 28, 2005, without further notice unless EPA receives adverse comment by January 27, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Who Has To Pay These Fees?

This rule applies to major stationary VOC and NO_x sources located in the District of Columbia. The District of Columbia’s definition of a “major stationary source” is found at 20 DCMR section 199.1. In a separate action, EPA is approving this definition as part of the District of Columbia’s ozone SIP. Pertaining to the application of this excess emissions fee for entities in the District of Columbia, a major stationary source is defined as “any stationary source of air pollutants that emits, or has the potential to emit, twenty five (25) tons per year or more of oxide of nitrogen or volatile organic compounds * * * These sources are subject to this emissions fee rule.”

III. How Are the Fees Calculated?

The fee is initially set at \$5,000 per ton of VOC or NO_x emitted by the source during the previous calendar year in excess of 80% of the baseline amount. The fee is to be adjusted annually, beginning in 1991, by the percentage by which the consumer price index has been adjusted. The baseline is the lower of the source’s actual or allowable VOC or NO_x emissions during calendar year 2005.

IV. Is the District of Columbia Required To Adopt an Excess Emission Fee Rule?

Under sections 182(d)(3), (e), and 185 of the Clean Air Act (the Act), states are required to adopt an excess emissions fee regulation for ozone nonattainment areas classified as severe or extreme. This regulation requires major stationary sources of VOC in the nonattainment area to pay a fee to the

state if the area fails to attain the standard by the attainment date set forth in the Act. The District of Columbia is classified as severe nonattainment area for ozone. Section 182(f) of the Act requires states to apply the same requirements to major stationary sources of oxides of nitrogen (NO_x) as are applied to major stationary sources of VOC.

V. What Are the Exceptions to this Rule?

As per section 185 of the Clean Air Act, the District of Columbia’s regulation provides for an exception of the fee during any year that is treated as an extension year under section 181(a)(5) of the Clean Air Act.

VI. What Administrative Requirements Must EPA Consider?

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.*).

VII. What Congressional Review Act Requirements Must EPA Consider?

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).

VIII. What Are the Requirements for Judicial Review of This Action?

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 28, 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 approval of the District of Columbia's Severe Ozone Nonattainment Area Fee SIP revision, as required under section 185 and 182(f) of the Clean Air Act, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 14, 2004.

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 J—District of Columbia

■ 2. In § 52.470, the table in paragraph (c) is amended by adding the entry for Chapter 3, Section 307, after existing entry Section 8–2:720(c) to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia (DCMR), Title 20—Environment				
*	*	*	*	*
Chapter 3 Operating Permits				
Section 307	Enforcement for Severe Ozone Nonattainment Areas.	4/01/04	12/28/04 [Insert page number where the document begins]	Provision allowing for the District to collect penalty fees from major stationary sources if the nonattainment area does not attain the ozone standard by the statutory attainment date.
*	*	*	*	*

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[FR Doc. 04-28191 Filed 12-27-04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[R03-OAR-2004-DC-0006; FRL-7854-7]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; VOC Emission Standards for Consumer Products**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the District of Columbia State Implementation Plan (SIP). The revisions pertain to the volatile organic compound (VOC) emission standards for consumer products used or sold in the District of Columbia. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA or the Act).

DATES: This rule is effective on February 28, 2005 without further notice, unless EPA receives adverse written comment by January 27, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2004-DC-0006 by one of the following methods:

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

B. Agency Web site: <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: morris.makeba@epa.gov.

D. Mail: R03-OAR-2004-DC-0006, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. 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 RME ID No. R03-OAR-2004-DC-0006. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, 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 RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the [Federal regulations.gov](http://www.regulations.gov) Web sites are 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 RME or [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 RME index at <http://www.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 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 District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: On April 16, 2004, the District of Columbia (the District) submitted several revisions to its SIP. The SIP revisions include both new regulations and amendments to Title 20 of the District of Columbia Municipal Regulations (20 DCMR). The new regulations in Title 20 DCMR (Environment), Subtitle A: Air Quality, Chapter 7, Volatile Organic Compounds are:

- (1) New Section 718—"Mobile Equipment Repair and Refinishing".
- (2) New Sections 719 through 734—"Consumer Products".
- (3) New Sections 735 through 741—"Portable Fuel Containers and Spouts".
- (4) New Sections 742 through 748—"Solvent Cleaning".
- (5) New Sections 749 through 754—"Architectural and Industrial Maintenance Coating".

The April 16, 2004 submittal also includes new definitions that were added in section 799, a new section 307 to Chapter 3—to provide for a fee penalty pursuant to section 185 of the Act, and amendments to Chapters 1, 2, 6, 7, and 8 to satisfy the Act's requirements for severe ozone nonattainment areas pursuant to the Metropolitan Washington DC 1-hour ozone nonattainment area's reclassification on January 24, 2003 from serious to severe nonattainment.

On September 20, 2004, the District supplemented its April 16, 2004 submittal. This supplemental submittal provides copies of standards that are incorporated by reference in the District's new and amended regulations and a copy of the District's responses to comments it received during its rule adoption process. On November 26, 2004, the District submitted another supplemental revision to its April 16, 2004 submittal. This supplemental submittal consists of revised versions of the new VOC regulations. These are minor revisions to the regulations which clarify the standards that are incorporated by reference and correct cross-referencing and typographical errors. This action concerns only sections 719 through 734 (Consumer Products) and revised section 799 containing the associated definitions for the District's consumer products rule. The remaining SIP revisions submitted on April 16, 2004 and supplemented on September 20, 2004 and November 26, 2004 are the subjects of separate rulemaking actions.

I. Background

As stated previously, this approval pertains only to the District's regulations for consumer products. The standards and requirements contained