

Dated: September 15, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC047-2021; FRL-6878-1]

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: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the District of Columbia (the District). This revision requires major sources of nitrogen oxides (NO_x) in the District to implement reasonably available control technology (RACT). This revision withdraws EPA's previously proposed conditional approval of the District's NO_x RACT regulation, and, instead, proposes full approval of the SIP revision. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before October 30, 2000.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. 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. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), ozone nonattainment areas classified as moderate or above are required to implement RACT for all major sources of NO_x 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. The District of Columbia is located within the Metropolitan Washington, DC ozone nonattainment area which is classified as a serious. Therefore, major stationary sources of NO_x are defined as those that emit or have the potential to emit 50 tons or more 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 Health (DoH), 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_x 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_x 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_x 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 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 Section 805 of Title 20 of the DCMR as supplement to its January 13, 1994 SIP submittal for parallel-processing by

EPA. These proposed revisions correct the deficiencies identified in the February 25, 1999 notice. Therefore, by this rulemaking, EPA is withdrawing its February 25, 1999 proposed conditional approval and is proposing full approval of the revised version the District of Columbia's NO_x RACT regulation found in section 805 of Title 20 of the DCMR submitted on August 28, 2000.

A summary of the District's submittal and EPA's rationale for approval are provided below. A more detailed description of the District's submittal and EPA's evaluation are included in the Technical Support Document (TSD) and the addendum to the TSD both prepared in support of this rulemaking action. A copy of the TSD and its addendum are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

II. Summary of the SIP Revision and EPA Evaluation

General Provisions

Subtitle I of 20 DCMR was amended to add a new section 805 that applies to all sources in the District having the potential to emit (PTE) 50 tons or more of NO_x per year. Exemptions from the requirements of section 805 are provided for sources that have a permit from the District limiting the potential to emit to less than 50 tons per year (TPY) and for emergency stand-by engines operated less than 500 hours per 12 month period. Section 805 contains presumptive emission limits for certain source categories of NO_x including: Stationary combustion turbines, fossil-fuel-fired steam-generating units and asphalt concrete plants. Individual sources in these categories with presumptive RACT emission limits may also apply for alternative emission limits which reflect the application of source-specific RACT. Any such applications for alternative RACT determinations are subject to approval by both the District and EPA as SIP revisions. All other major source categories of NO_x must have a RACT emission limit approved by the District and EPA in an emissions control plan. All major sources of NO_x must submit an emissions control plan to the District that describes the source and demonstrates how RACT will be implemented. The District will conduct a public hearing for those sources that apply for alternative emission limits and those not subject to specific source category emission limits before final approval is issued.

EPA's Evaluation

EPA defines PTE in 40 CFR 51.165(a)(1)(iii) as the maximum capacity of a source to emit unless federally enforceable restrictions are imposed that would limit emissions. Subsection 805.1(c) in the District's rule exempts sources with a District permit

limiting PTE to less than 50 TPY. Because the District of Columbia does not have a Federally Enforceable State Operating Permit (FESOP) program, subsection 805.1(c)(1) requires that any permit which limits the PTE to less than 50 TPY of NO_x must be transmitted and approved by the EPA as a revision to the District's SIP.

Source Category RACT

RACT for specific categories of NO_x sources is established in subsections 805.4, 805.5, 805.6 and 805.8. of DCMR No. 20, Subtitle 1 as listed in the table below, entitled "RACT for NO_x Sources":

RACT FOR NO_x SOURCES

Source category	Fuel type	Rated heat capacity	NO _x emission limit	Averaging period
Simple Cycle Turbine	Oil	≥ 100 MMBTU/hr*	75 ppmvd @ 15% O ₂ **	Not specified***
Combustion Turbine (not otherwise classified).	Not specified	≥ 100 MMBTU/hr	Exempt if operated less than 500 hours/year.	N/A
Utility Boiler (not otherwise specified).	Fossil Fuel	≥ 20 MMBTU/hr	No limit, RACT is defined as an annual combustion adjustment.	N/A
		≥ 50 MMBTU/hr		
Utility Boiler—tangential or face-fired.	Oil	≥ 50 MMBTU/hr	0.3 lbs./MMBTU	Calendar day
Utility Boiler—dry bottom ...	Coal	≥ 100 MMBTU/hr		
-tangential.		≥ 100 MMBTU/hr	0.43 lbs./MMBTU	Calendar day
-face-fired.				
-stoker.				
Utility Boiler—tangential or face-fired.	Oil	≥ 100 MMBTU/hr	0.25 lbs./MMBTU	Calendar Day
Utility Boiler—tangential or face-fired.	Oil and Natural Gas combined.	≥ 100 MMBTU/hr	0.25 lbs./MMBTU	Calendar Day
Utility Boiler—tangential	Natural Gas only	≥ 100 MMBTU/hr	0.20 lbs./MMBTU	Calendar Day
Asphalt Concrete Plants	N/A	N/A	150 ppmvd NO _x and 500 ppmvd CO @ 7% O ₂ .	Not specified ***

* Million British Thermal Units (MMBTU) per hour (hr).
 ** Parts per million dry volume (ppmvd)
 *** Where an averaging time is not specified, compliance is to be continuous.

Subsection 805.4 establishes emission limits for stationary combustion turbines. Subsection 805.4(b)(1) exempts combustion turbines operated less than 500 hours per calendar year from meeting the NO_x RACT limits in subsection 805.4. Subsection 805.5 establishes presumptive RACT for fossil-fueled steam-generating units. Utility boilers with a rated heat capacity of 100 MMBTU or greater must demonstrate compliance with the applicable emission limit using approved continuous emissions monitoring (CEM) technology pursuant to 40 CFR Part 60, Appendix B. All other utility boilers and turbines subject to these source category requirements may choose between CEM technology or alternative test methods approved by the District and EPA.

Subsection 805.5(a) requires that any fossil fuel fired steam-generating units with an energy input capacity greater than or equal to 20 MMBTU per hour must perform an annual adjustment of the combustion process. The minimal requirements of the annual combustion adjustment are specified in subsection 805.8. Although sources subject to this requirement must record the results of the combustion process adjustments, this requirement will not result in an

additional emission limitation. The combustion process adjustment is the only RACT requirement for sources with a rated heat capacity equal to or greater than 20 MMBTU but less than 50 MMBTU.

Subsection 805.6 specifies an emission limit of 150 ppmvd NO_x and 500 ppmvd CO corrected to 7% oxygen for asphalt concrete plants that emit 50 TPY or greater of NO_x. Sources may choose between CEM or test methods approved by the District and EPA to demonstrate compliance.

However, if a source chooses to use testing, subsection 805.6(d)(2) requires that testing be conducted at least annually and demonstrate that the NO_x emission rate does not exceed the rate specified in subsection 805.5.

EPA's Evaluation

The emission limits for large utility boilers are supported by data gathered by the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO). EPA has published RACT-level NO_x emission rates for selected types of utility boilers that are to be applied to groups of boilers on an area wide, BTU-weighted basis (November

25, 1992, 57 FR 55620, 55625). The District's emission limits for individual source units are very similar to EPA's area wide averages and should provide the same level of control recommended by EPA. The emission limit for oil-fired combustion turbines is supported by data gathered for existing turbines by the Northeast States for Coordinated Air Use Management (NESCAUM) and is acceptable. EPA has not issued guidance on reducing NO_x emissions from asphalt concrete plants. EPA finds that the emission limit established for asphalt concrete plants in section 805.6 of the District's rule constitutes an acceptable level of RACT.

The District has defined RACT for combustion sources equal to or greater than 20 MMBTU/hour but less than 50 MMBTU/hour as annual combustion adjustments. The regulation details the minimal requirements for the adjustment and specifies recordkeeping requirements for each combustion adjustment. EPA finds that the annual combustion adjustment constitutes RACT for combustion sources equal to or greater than 20 MMBTU/hour but less than 50 MMBTU/hour and is approvable.

Source-specific (Generic) RACT Provisions

The District's regulation requires that all other NO_x sources having the potential to emit 50 tons of NO_x per year not listed on the table above must submit an emission control plan to the District specifying a RACT emission limit that will be met by May 31, 1995 (subsection 805.7). The emission control plan must be approved by the District and approved as a SIP revision by EPA. Sources must demonstrate compliance using either CEM technology or testing approved by the District and EPA. Testing, if chosen, must be conducted annually and must demonstrate that the NO_x emission rate does not exceed the emission rate specified in subsection 805.5 for the applicable fossil fuel steam-generating unit. Daily records must be maintained and kept for three years to demonstrate compliance with the applicable emission rate. Emissions that are subject to any other regulation in subtitle I of 20 DCMR or those that have emission limits approved in a federally enforceable regulation as meeting Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) since January 1, 1990, are exempt from these requirements.

EPA's Evaluation

Under subsection 805.7, major NO_x sources that are not otherwise covered by presumptive emission limits under section 805 are subject to a process to develop and submit individual source RACT determinations for the District's approval and submission to EPA as SIP revisions. For all other major NO_x sources or those NO_x sources electing not to comply with presumptive emission requirements, the District provides the option of a source-specific RACT determination through subsections 805.2(b) and 805.7. Subsections 805.2(b) and 805.7 specifically allow sources to have RACT approved via the SIP revision process. EPA refers to this type of provision as a "generic RACT" provision in a state regulation. Specifically, "generic RACT rules" are defined as rules that merely require sources to identify RACT-level controls which the state will later submit through the SIP process.

EPA has long interpreted the RACT requirements of the Clean Air Act to mean that states must adopt and submit regulations that include emission limits as applicable to the subject sources. In other words, a state would not fully meet the RACT requirement until it establishes emission limits on all major sources. In a November 7, 1996 EPA

policy memorandum from Sally Shaver, Director, Air Quality Strategies and Standards Division, to all Regional Air Divisions Directors, EPA outlined the necessary prerequisites for approving a state's (or in this case the District's) generic RACT regulation. In this memorandum, EPA recognized that in most instances a generic RACT rule strengthens the SIP to the extent that it sets dates by which sources must submit RACT and comply with requirements. The November 7, 1996 memorandum recommends that approval should be granted to a state's generic rule as long as EPA believes that the state has submitted all the source-specific RACT determinations and has submitted a declaration that to the best of its knowledge, there are no remaining unregulated sources. Full approval, however, should not be granted until EPA has also determined through rulemaking that the source-specific determinations also meet the RACT requirements.

In a letter dated December 16, 1998, the District of Columbia Department of Health notified EPA that all major stationary sources of NO_x emissions in the District are subject to the presumptive source category RACT limits of subsections 805.4, 805.5 or 805.6. In other words, no major sources in the District have elected to apply for alternative RACT determinations through the source-specific process. Furthermore, the December 16, 1998 letter included a "negative declaration" pertaining to the entire universe of all other categories of major sources of NO_x. In other words, the District has no other major sources of NO_x, such as incinerators, reciprocating internal combustion engines, glass manufacturing, nitric/adipic acid production, cement manufacturing and iron/steel manufacturing plants, etc. The District has not and will not be submitting any source-specific RACT determinations because the entire of universe of major sources of NO_x in the District are subject to RACT emission limits under section 805. Because all major sources of NO_x in the District are subject to RACT, as established in section 805, EPA finds that the requirements of sections 182 and 184 of the Clean Air Act have been met regardless of the generic provisions of section 805.

Monitoring, Recordkeeping and Reporting

For sources subject to the presumptive limits found in section 805, subsection 805.2(a) requires such sources to demonstrate compliance with the applicable emission limits using

continuous emission monitors according to 40 CFR part 60 Appendix B, or through other test methods approved by the District and EPA. For combustion turbines and utility boilers, compliance will be determined using an emission monitoring system to continuously monitor and record the NO_x emission rate and demonstrate that the NO_x emission rate does not exceed the applicable allowable NO_x emission rate (subsections 805.4(d) and 805.5(e)). For sources electing alternative emission limits as RACT, subsections 805.2(c) and 805.7(d) require all sources to maintain continuous compliance through installation of a continuous emissions monitoring system or other methods consistent with the operational parameters and limits set forth in any permit or certificate approved by the District and EPA.

EPA's Evaluation

Specific recordkeeping requirements necessary to determine compliance are not contained in the regulation. Subsection 805.3(c)(4) requires all emission control plans to include recordkeeping procedures for air pollution control equipment used to reduce NO_x emissions. However, because the emission control plans for sources subject to source category limits in subsections 805.4 through 805.6 are not required to be submitted as SIP revisions they are not made federally enforceable through this regulation. EPA believes that this deficiency is resolved through Chapter 5 of subtitle I of the District's regulations. This SIP-approved Chapter requires stationary sources with emissions greater than 25 TPY to conduct testing and maintain adequate records for compliance with applicable requirements.

EPA's review of this material indicates approval of this SIP revision. EPA is proposing to approve the District of Columbia's SIP revision for NO_x RACT, which was submitted on January 13, 1994 and supplemented on August 28, 2000. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those

identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the District of Columbia and submitted formally to EPA for incorporation into the SIP.

III. Proposed Action

EPA is withdrawing the proposed conditional approval published in the **Federal Register** on February 25, 1999, and is, instead, proposing full approval of the District of Columbia's NO_x RACT regulation found in section 805 of Title 20 of the DCMR which was submitted as a SIP revision by the District of Columbia on January 13, 1994 and supplemented on August 28, 2000.

IV. Administrative 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, which proposes approval of the District of Columbia's NO_x RACT 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, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: September 15, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 217-0261; FRL-6878-8]

Approving Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of two San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) permitting and New Source Review (NSR) rules for stationary sources. These rules were submitted as revisions to the California State Implementation Plan (SIP). EPA originally proposed full approval of these rules in the **Federal Register** (64 FR 51493) on September 23, 1999. However, based on comments EPA received on the proposed approval and further review of the rules, EPA has determined that the rules as submitted are not fully approvable. Therefore, EPA is now proposing a limited approval and limited disapproval of the rules and requesting comment on this proposal.

The intended effect of proposing limited approval and limited disapproval is to ensure that the District's permitting and NSR rules are consistent with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is proposing a limited approval of the rules because the rules generally strengthen the SIP. EPA is concurrently proposing a limited disapproval of the rules because the rules contain deficiencies which do not fully meet the CAA requirements for non-attainment areas and must be corrected. If EPA finalizes this limited approval and limited disapproval, EPA's final action will incorporate the rules into the federally approved SIP. EPA evaluated these rules based on CAA guidelines for EPA action on SIP submittals and EPA's general rulemaking authority.

DATES: Comments must arrive by October 30, 2000.

ADDRESSES: Send comments to: Ed Pike, Permits Office [AIR-3], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can review and copy the submitted rules, the existing SIP rules, and EPA's Technical Support Document (TSD) at EPA's Region 9 office from 8:30 a.m. to 5 p.m., Monday to Friday. A reasonable fee may be charged for copying.

Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, 2020 L Street, Sacramento, CA 95814
San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Avenue, Fresno, CA 93726

FOR FURTHER INFORMATION CONTACT: Please call Ed Pike at (415) 744-1211 or send email to pike.ed@epa.gov.

SUPPLEMENTARY INFORMATION: