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

BILLING CODE 6560-50-P

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 Register](http://www.federalregister.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

in the District's consumer products rule are based on the Ozone Transport Commission (OTC) model rule. The OTC developed control measures into model rules for a number of source categories. The OTC consumer products model rule is based on the existing rules developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the Ozone Transport Region (OTR).

II. Summary of SIP Revision

The District's consumer products rule (sections 719 through 734) applies to any person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2005 for use in the District. The rule sets specific VOC content limits in percent VOCs by weight for consumer products with a compliance date of January 1, 2005. Exemptions from the VOC content limits are listed in the rule. The rule also contains requirements for the following consumer products: (1) Products requiring dilution, (2) ozone depleting compounds, (3) aerosol adhesives, (4) antiperspirants or deodorants, (5) charcoal lighter materials, and (6) floor wax strippers. Alternative control plans (ACP) are also provided by allowing responsible parties the option to voluntarily enter into separate ACP agreements for the consumer products mentioned above. Criteria for innovative products exemption and requirements for variance requests are listed in the rule. In addition, the rule contains administrative requirements for labeling and reporting as well as test methods for demonstrating compliance. The test methods used to test coatings must be the most current approved method at the time testing is performed.

III. Final Action

EPA is approving revisions to the District of Columbia SIP to establish a regulation for the control of VOC emissions from consumer products. The implementation of this rule will result in the reduction of VOC emissions from consumer products in the District of Columbia. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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. 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.*).

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 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 action pertaining to the District of Columbia's consumer products rule may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, 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 Section 52.470, the table in paragraph (c) is amended by adding the

following entries to “District of Columbia Municipal Regulations (DCMR), Title 20—Environment, Chapter 7—Volatile Organic Compounds”:

■ a. Adding entries for Section 719 through Section 734.

■ b. Adding a new entry for Section 799 after the existing entry for Section 799.

The added entries read as follows:

§ 52.470 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20—Environment				
Chapter 7—Volatile Organic Compounds				
Section 719	Consumer Products—General Requirements.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 720	Consumer Products—VOC Standards.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 721	Consumer Products—Exemptions from VOC Standards.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 722	Consumer Products—Registered Under FIFRA.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 723	Consumer Products—Products Requiring Dilution.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 724	Consumer Products—Ozone Depleting Compounds.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 725	Consumer Products—Aerosol Adhesives.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 726	Consumer Products—Antiperspirants or Deodorants.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 727	Consumer Products—Charcoal Lighter Materials.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 728	Consumer Products—Floor Wax Strippers.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 729	Consumer Products—Labeling of Contents.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 730	Consumer Products—Reporting Requirements.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 731	Consumer Products—Test Methods.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 732	Consumer Products—Alternative Control Plans.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].
Section 733	Consumer Products—Innovative Products Exemption.	04/16/04, 11/26/04	12/28/04	[Insert page number where the document begins].

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 734	Consumer Products—Variance Requests.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
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Section 799	Definitions	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
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 [FR Doc. 04-28193 Filed 12-27-04; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME R03-OAR-2004-DC-0002; FRL-7855-1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Approval of Minor Clarifications to Municipal Regulations

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 include minor changes to clarify that the allowable emission rates for particulates and nitrogen oxides (NO_x) are expressed in pounds of pollutant per million BTUs (lbs/MMBTUs) of heat input in District of Columbia Municipal Regulations (DCMRs). This action is being taken in accordance with the Clean Air Act (CAA).

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-0002 by one of the following methods:

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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-0002, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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Instructions: Direct your comments to RME ID No. R03-OAR-2004-DC-0002. 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 or e-mail. The EPA RME and the Federal 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, 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: Linda Miller, (215) 814-2068, or by e-mail at miller.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The District of Columbia submitted SIP revisions on April 16, 2004 pertaining to changes necessary to meet the more stringent requirements of section 182(d) of the CAA and to make certain clarifications. This action pertains to changes made to previously SIP-approved Sections 600.1 and 805.5 of Title 20 of the DCMRs to clarify that the allowable emission rates for particulates and NO_x are expressed in pounds of pollutant per million BTUs (lbs/MMBTUs).