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Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lewis, (215) 814-2037, or by e-mail at lewis.jacqueline@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: February 24, 2009.

William T. Wisniewski,
Acting Regional Administrator, Region III.
[FR Doc. E9-6662 Filed 3-24-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2008-0595; FRL-8780-7]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

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. This SIP revision consists of a demonstration that the District of Columbia meets the requirements of reasonably available control technology (RACT) for nitrogen oxides (NO_x) and volatile organic compounds (VOCs) set forth by the Clean Air Act (CAA). This SIP revision demonstrates that all requirements for RACT are met either through: certification that previously adopted RACT controls in the District of Columbia's SIP that were approved by EPA under the 1-hour ozone National Ambient Air Quality Standard (NAAQS) are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour implementation purposes; and a negative declaration demonstrating that no facilities exist in the District of Columbia for the applicable control technology guideline (CTG) categories. This action is being taken under the CAA.

DATES: Written comments must be received on or before April 24, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0595 by one of the following methods:

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

B. *E-mail:*
fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2008-0595, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2008-0595. 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.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <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.

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FOR FURTHER INFORMATION CONTACT: Patrick J. Egan, (215) 814-3167, or by e-mail at egan.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Ozone is formed in the atmosphere by photochemical reactions between VOC, NO_x, and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply controls on VOC/NO_x emission sources to achieve emission reductions.

Since the 1970's, EPA has consistently interpreted RACT to mean the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. *See, e.g.*, 72 FR 20586 at 20610 (April 25, 2007). Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA, and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. On August 4, 1992 (57 FR 34250), EPA published a final rulemaking notice approving the District of Columbia's SIP revision in order to correct the District's VOC RACT regulations and establish and require the implementation of revised SIP regulations to control VOCs.

The second requirement, set forth in section 182(b)(2) of the CAA, applies to moderate (or worse) ozone nonattainment areas and attainment areas in the ozone transport region (OTR) established pursuant to section 184 of the CAA. These areas are required to implement RACT controls on all major VOC and NO_x emission sources and on all sources and source categories covered by a CTG issued by EPA. On October 27, 1999 (64 FR 57777), EPA published a final rulemaking notice approving the District of Columbia's SIP revision as meeting the CTG RACT provisions of the CAA. Further details of The District of Columbia's RACT requirements can be found in a Technical Support Document (TSD) prepared for this rulemaking.

The Washington 1-hour Area had certain RACT requirements under section 182 for VOC and NO_x. Section 182(b)(2) of the CAA required the District of Columbia to implement RACT on all sources and source categories covered by a CTG issued by EPA. Point sources with the potential to emit 50 tons per year or more of VOCs or 100 tons per year or more of NO_x that were not covered by a CTG were also required to implement RACT. As a result of failure to meet the attainment date of November 15, 1999, the

Metropolitan Washington area was reclassified from serious to severe nonattainment area for the 1-hour standard (68 FR 3410, January 24, 2003). As a result of the reclassification, the District of Columbia was required to perform RACT evaluations on point sources with the potential to emit 25 tons per year for either VOC or NO_x (69 FR 77647, December 28, 2004).

Under the 1-hour ozone NAAQS, the District of Columbia was originally classified as part of the Metropolitan Washington serious 1-hour ozone nonattainment area (Washington 1-hour Area) (56 FR 56694 at 56844, November 6, 1991). The Washington 1-hour Area is also part of the OTR. The OTR is established by section 184 of the CAA. Areas in the OTR are subject to OTR-specific RACT requirements. Section 184(b)(1)(B) of the CAA, requires the implementation of RACT with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) of the CAA, requires the implementation of major stationary source requirements as if the area were a moderate nonattainment area on any stationary source with a potential to emit of at least 50 tons per year of VOC or 100 tons per year of NO_x. However, the Washington 1-hour Area satisfies the section 184 RACT requirements because section 182 requirements are more stringent as a result of reclassification to a severe nonattainment area for the 1-hour standard; therefore, no additional measures for the implementation of RACT are applicable (68 FR at 3425, January 24, 2003).

Under the 8-hour ozone NAAQS, the Washington 1-hr Area, with the exception of Stafford County, Virginia was designated and classified as a moderate nonattainment area, and is therefore subject to the CAA RACT requirements in section 182(b) (69 FR 23858, April 30, 2004). The District of Columbia is required to submit to EPA a SIP revision that demonstrates how the District meets the RACT requirements under the 8-hour ozone standard.

EPA requires under the 8-hour ozone NAAQS that states meet the CAA RACT requirements, either through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour attainment purposes, or through the establishment of new or more stringent requirements that represent RACT control levels. *See, Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990*

Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline (Phase 2 Rule) 70 FR 71612, 71655, November 29, 2005. Sections 172(c)(1) and 182(b)(2) of the CAA require that all SIPs satisfy the NO_x and VOCs RACT requirements that apply in areas that have not attained the NAAQS for ozone. *See* 42 U.S.C. 7502(c)(1), 42 U.S.C. 7511a(b)(2), and 42 U.S.C. 7511a(f). EPA has determined that States that have RACT provisions approved in their SIPs for 1-hour ozone nonattainment areas have several options for fulfilling the RACT requirements for the 8-hour ozone NAAQS. If a State meets certain conditions, it may certify that previously adopted 1-hour ozone RACT controls in the SIP continue to represent RACT control levels for purposes of fulfilling 8-hour ozone RACT requirements. Alternatively, a State may establish new or more stringent requirements that represent RACT control levels, either in lieu of or in conjunction with a certification.

As set forth in the preamble to the Phase 2 Rule, a certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data (70 FR at 71655). This information may supplement existing RACT guidance documents that were developed for the 1-hour standard, such that the State's SIP accurately reflects RACT for the 8-hour ozone standard based on the current availability of technically and economically feasible controls. Establishment of new RACT requirements will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Another 8-hour ozone NAAQS requirement for RACT is to submit a negative declaration if there are no CTG sources or major sources of VOC and NO_x emissions in lieu of or in addition to a certification.

II. Summary of SIP Revision

On September 22, 2008, the District of Columbia Department of Environment (DDOE) submitted a revision to its SIP that addresses the requirements of RACT under the 8-hour ozone NAAQS set forth by the CAA. The District of Columbia's SIP revision is consistent with the process in the Phase 2 Rule preamble, and satisfies the requirements

of RACT set forth by the CAA under the 8-hour ozone NAAQS. The District of Columbia's SIP revision satisfies the 8-hour RACT requirements through a certification that previously adopted RACT controls in the District of Columbia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continues to represent RACT for the 8-hour implementation purposes and a negative declaration that

no CTG or non-CTG facilities exist in the District of Columbia.

A. VOC CTG RACT Controls

The District of Columbia's Regulations and Statutes, under Title 20 District of Columbia Municipal Regulations (DCMR) Chapter 7, contain the District of Columbia's CTG VOC RACT controls that were implemented and approved in the District SIP under the 1-hour ozone NAAQS. Although Alternate Control Techniques (ACTs)

are not regulatory documents and have no legal effect on state regulations, EPA requires that states verify that ACTs have been considered in the RACT program development process. Therefore, DDOE included ACTs in their certification of applicable RACT requirements in the submittal. Table 1 lists District of Columbia's VOC RACT controls, which the District of Columbia is certifying as meeting the 8-hour RACT requirements.

TABLE 1—DISTRICT OF COLUMBIA'S CTG AND ACT VOC RACT CONTROLS

DCMR Title 20 section	Existing stationary sources—40 CFR 52.2420(c)			
	Title of regulation	State effective date	Federal Register date for SIP approval	Citation
716	Offset Lithography	10/2/98	10/27/99	64 FR 57777
704	Stage I Vapor Recovery	3/15/85	10/27/99	64 FR 57777
708 and 742–748	Solvent Cleaning Degreasing	3/15/85	10/27/99 & 12/29/2004	64 FR 57777 & 69 FR 77906
718	Paint—Spray Booth	11/26/04	12/23/04	69 FR 76855
706	Petroleum Dry Cleaners	3/15/85	10/27/99	64 FR 57777
709.1	Cutback Asphalt	3/15/85	10/27/99	64 FR 57777
704.4	Leaks from Gasoline Tank Trucks and Vapor Collection Systems.	3/15/85	10/27/99	64 FR 57777
710, Appendix 7–1	Engraving and Plate Printing	3/15/85	10/27/99	64 FR 57777
705.4–705.14	Stage II Gasoline Vapor Recovery	3/15/85	10/27/99	64 FR 57777

DDOE also submitted a negative declaration certifying that the following VOC CTG sources do not exist in the

District of Columbia and therefore there is no need for the District of Columbia to adopt CTGs for these sources. Table

2 lists VOC CTG sources in the District of Columbia's negative declaration.

TABLE 2—VOC CTG SOURCES FOR WHICH NO APPLICABLE FACILITIES EXIST IN THE DISTRICT OF COLUMBIA

- Automobile and light-duty truck manufacturing.
- Coating of cans, coils, paper, fabric and vinyl, metal furniture, large appliances, magnet wire, miscellaneous metal parts and products and flatwood paneling.
- Storage of petroleum liquids in fixed-roof tanks.
- Bulk gasoline plants.
- Petroleum refinery sources.
- Manufacture of synthesized pharmaceutical products, pneumatic rubber tires, vegetable oil, synthetic organic chemicals (fugitive VOCs and air oxidation) and high density polyethylene, polypropylene and polystyrene resins.
- Graphic arts systems.
- Storage, transportation and marketing of VOCs (fugitive VOCs from oil and gas production and natural gas and gasoline processing).
- Aerospace.
- Shipbuilding and repair.
- Distillation or reactor or batch processes in the synthetic organic chemical manufacturing industry.
- Wood furniture coatings.
- Storage of petroleum liquids in external floating-roof tanks.
- Bulk gasoline terminals.
- Petroleum refinery equipment leaks.

B. NO_x RACT Controls

The District of Columbia's Regulations and Statutes under Title 20

DCMR Chapter 8, Section 805 contains the District of Columbia's NO_x RACT controls that were implemented and approved into the District's SIP under

the 1-hour ozone SIP. Table 3 lists the District of Columbia's NO_x RACT controls.

TABLE 3—DISTRICT OF COLUMBIA'S NO_x RACT CONTROLS

DCMR Title 20 section	Title of regulation	State effective date	Federal Register date for SIP approval	Citation
805.1, 805.5	Fuel-burning equipment with an input capacity of 100 MM Btu/hr or greater.	4/16/04	12/28/04	69 FR 77645
805.5, 805.8	Fuel-burning equipment with an input capacity equal to or greater than 20MM/Btu/hr, but less than 50 MM Btu/hr.	4/16/04	12/28/04	69 FR 77645
805.1, 805.5	Fuel-burning equipment with an input capacity equal to or greater than 50 MM/Btu/hr, but less than 100 MM Btu.	4/16/04	12/28/04	69 FR 77645
805.4	Combustion turbine with an input capacity equal to or greater than 100 MM.	4/16/04	12/28/04	69 FR 77645
805.1, 709.1	Asphalt concrete plant with a potential to emit (PTE) 25 tons per year or greater.	4/16/04	12/28/04	69 FR 77645
805.1	All other fuel burning equipment with a PTE 25 tons per year of NO _x or greater.	4/16/04	12/28/04	69 FR 77645
805.1	Stationary Internal Combustion Engines	4/16/04	12/28/04	69 FR 77645

The District of Columbia has adopted the NO_x SIP Call trading program. The PEPCO-Benning Road Generating Station and GSA facilities in the District of Columbia subject to the NO_x SIP Call may be recertified as meeting NO_x RACT requirements based on the Phase 2 Rule and source-specific RACT controls, as well as their compliance with the NO_x Budget Trading Program. See Phase 2 Rule, 70 FR 71617, 71652, November 29, 2005.

The District of Columbia SIP revision certifies that no new or revised NO_x and VOC requirements have been adopted since the applicability threshold of 25 tons per year for major sources represent current RACT control level under the 8-hour ozone NAAQS.

III. Proposed Action

EPA is proposing to approve the District of Columbia SIP revision that addresses the requirements of RACT under the 8-hour ozone NAAQS. The District of Columbia's SIP revision was submitted on September 22, 2008. This SIP revision is based on a certification that previously adopted RACT controls in the District of Columbia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour implementation purposes, and a negative declaration demonstrating that no facilities exist in the District of Columbia for the applicable CTG categories. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission

that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the District of Columbia RACT under the 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 24, 2009.

William T. Wisniewski,

Acting Regional Administrator, Region III.
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