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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2008-0595; FRL-8918-1]

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: Final rule.

SUMMARY: EPA is approving 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: *Effective Date:* The final rule is effective on July 16, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2008-0595. 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.*, confidential business information (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 District of Columbia Department of the Environment, 51 N Street, NE., 6th Floor, Washington, DC 20002.

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

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 2009 (75 FR 12778), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia. The NPR proposed approval of the requirements of RACT under the 8-hour Ozone NAAQS. EPA received no comments on the proposal to approve the District of Columbia SIP revision. The formal SIP revision was submitted by the District of Columbia on September 22, 2008.

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 demonstrating that facilities exist in the District of Columbia for the applicable control technology guideline (CTG) categories.

III. Final Action

EPA is approving 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.

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 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 rule 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.

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 action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by August 17, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 RACT provisions under the 8-hour ozone NAAQS, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 5, 2009.
William C. Early,
Acting 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 (e) is amended by adding the entry for “RACT under the 8-hour ozone NAAQS”—District of Columbia—at the end of the table to read as follows:

§ 52.470 Identification of plan.
* * * * *
(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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RACT under the 8-Hour ozone NAAQS.	District of Columbia	9/22/08	6/16/09, [Insert page number where the document begins].	