

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[DC032-2008; FRL-6500-7]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Approval of Definitions for the New Source Review Regulations**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is taking final action to approve revisions to the District of Columbia State Implementation Plan (SIP). The revisions concern the definitions for thirteen terms used in the new source review regulations. The intended effect of this action is to approve the definitions in the District Of Columbia regulations as revisions to the SIP.

DATES: This rule is effective on January 6, 2000.

ADDRESSES: 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: Linda Miller, (215) 814-2068, or by e-mail at miller.linda@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On June 21, 1985, October 22, 1993, and May 2, 1997, the District of Columbia submitted formal revisions to the new source review provisions of its SIP. On June 2, 1997 (62 FR 29682), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia proposing approval of the new source review program revisions submitted on the above listed dates. The definition of the term "modification" was approved by EPA in a final rulemaking on July 31, 1997 (62 FR 40937). However, the District of Columbia's submittals and EPA's May 2, 1997 proposed approval also included the following additional new and revised definitions: "major stationary source," "new source," "potential to emit," "shutdown," "actual emissions,"

"allowable emission," "begin actual construction," "commence," "complete," "major modification," "necessary preconstruction approvals," "net emissions increase," "significant." This final rulemaking is to also approve these new and revised definitions, contained in the District of Columbia's new source review regulations, which were inadvertently omitted from the July 31, 1997 final approval rulemaking, as SIP revisions.

II. Final Action

EPA is approving the definitions, referenced above, found in DCMR Title 20, section 199 as revisions to the District of Columbia SIP.

III. Administrative Requirements**A. Executive Orders 12866**

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final 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." Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not

significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205,

EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so

would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve new source review definitions as part of the District’s SIP must be filed in the United States Court of Appeals for the appropriate circuit by February 7, 2000. 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 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, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone.

Dated: November 29, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

Part 52 of 40 CFR 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 entry for Chapter 1, section 199 in the “EPA Approved Regulations for the District of Columbia” table in paragraph (c) is revised to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Chapter 1—General				
*	*	*	*	*
Section 199	Definitions and Abbreviations.	4/29/97	12/7/99 64 FR 68295	Definitions of the terms actual emissions, allowable emissions, begin actual construction, commence, complete, major modification, major stationary source, necessary preconstruction approvals, net emissions increase, new source, potential to emit, shutdown, and significant.
*	*	*	*	*

[FR Doc. 99-31543 Filed 12-6-99; 8:45 am]

BILLING CODE 6560-50-P