attachments be submitted in an 8½″x11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comments are anticipated. If no adverse comments or any written notice of intent to submit adverse comment are received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days prior to the effective date, the Coast Guard will publish a notice in the **Federal Register** stating that no adverse comment was received and announcing confirmation that this rule will become effective as scheduled. However, if the Coast Guard receives written adverse comment or written notice of intent to submit adverse comment, the Coast Guard will publish in the final rule section of the **Federal Register** a timely withdrawal of this rule. If the Coast Guard decides to proceed with a rulemaking, a separate Notice of Proposed Rulemaking (NPRM) will be published and a new opportunity for comment provided.

A comment is considered ''adverse'' if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

This action was initiated by the International Ship Masters' Association (ISMA), an organization representing American and Canadian mariners operating on the Great Lakes, particularly those who regularly transit River Rouge. ISMA members claimed that vehicular traffic had sharply declined on Fort Street and Jefferson Avenue bridges following construction of the I–75 overpass, and that restricted bridge openings during morning and afternoon rush-hour periods were no longer necessary.

The District Commander queried local Coast Guard commands, and the owners of the bridges, for comments and observations concerning traffic patterns and impact on navigation in River Rouge. Local Coast Guard units supported ISMA's observations of conditions at the two bridges. The owners of Fort Street bridge (Michigan Department of Transportation), and Jefferson Avenue bridge (Wayne County, MI), were contacted and asked to provide comments concerning the status of vehicular traffic on the bridge and the need for restricted bridge openings. Both owners validated the reduction in vehicular traffic over these highways and stated no objections to the Coast Guard rescinding the current operating regulations.

This action would remove the regulation in 33 CFR 117.645 in its entirety.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This determination is made based on the fact that bridge openings were originally reduced to accommodate vehicular traffic crossing River Rouge. The Interstate overpass has effectively eliminated rush-hour congestion at this location, and subsequently restores the need for the bridge to open on signal for marine traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This rule will not affect the volume of vehicular traffic in the area, nor is it expected to adversely impact any industries located on River Rouge. The companies queried by the Coast Guard expressed no objections to this action.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Any comments submitted in response to this finding will be evaluated under the criteria described earlier in the preamble for comments.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2.1, paragraph 32(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, 33 CFR part 117 is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.645 [Removed]

2. Remove § 117.645.

Dated: February 8, 1999.

J.F. McGowan,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 99–4722 Filed 2–24–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC017–2013a; FRL–6234–6]

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: Direct final rule.

SUMMARY: EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision requires major sources of nitrogen oxides (NO_X) in the District to implement reasonably available control technology (RACT). The effect of this action is to approve the SIP revision on the condition that deficiencies in the regulation are corrected and that the revised regulation is resubmitted within one year of this approval.

DATES: This direct final rule is effective on April 26, 1999 without further notice, unless EPA receives adverse comment by March 29, 1999. If adverse comment is received, EPA 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: 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, 2100 Martin Luther King Ave, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney at (215) 814–2092, or by e-mail at gaffney.kristeen@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 section 182 of the Clean Air Act (CAA), ozone nonattainment areas classified as serious 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. Since the District of Columbia is classified as a serious ozone nonattainment area, major stationary sources are defined as those that emit or have the potential to emit 50 tons or more of NO_X per year.

On January 13, 1994, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) submitted revisions to its State Implementation Plan (SIP) that included a new regulation, Section 805, of the District of Columbia Municipal Regulation (DCMR) No. 20, Subtitle I entitled ''Reasonably Available Control Technology for Major Stationary Sources of Oxides of Nitrogen.'' 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. This action is being taken under section 110 of the Clean Air Act.

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. Approval of alternative determinations are subject to approval by the District and EPA. 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 Evaluation

EPA defines potential to emit 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, but does not also require sources to have federally enforceable restrictions on PTE. In order to correct this deficiency, the District must revise section 805.1(c) to allow exemptions only where there are federally-enforceable restrictions that limit NO_X emissions to less than 50 TPY.

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 <50 MMBTU/hr	No limit, RACT is defined as an annual combustion adjustment.	Not specified.
Utility Boiler—tangential or face-fired.	Oil	≥50 MMBTU/hr <100 MMBTU/hr	0.3 lbs./MMBTU	Calendar day.
Utility Boiler—dry bottom: —tangential—face-fired—stoker	Coal	≥100 MMBTU/hr	0.43 lbs./MMBTU	Calendar day.
Utility Boiler—tangential or face-fired.	Oil	≥100 MMBTU/hr	0.25 lbs./MMBTU	Calendar day.

RACT for NO_X Sources—Continued

Source category	Fuel type	Rated heat capacity	NO_X emission limit	Averaging period
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).

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 any fossil fuel fired steam-generating units with an energy input capacity greater than or equal to 20 MMBTU per hour must adjust the combustion process on a yearly basis to minimize the total emissions representing the sum of the NO_X emission rate and one-half the carbon moxide (CO) emission rate (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 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 areawide, 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 areawide 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 combustion adjustments to minimize the result of the following equation: NO_X emission rate + (0.5 * CO emission rate).

The technical basis for this equation is unsupported, particularly with respect to the partial addition of the CO emission rate. In some cases, a NO_X emission limit for a combustion source is accompanied by a CO limit due to the potential for increased CO emissions from NO_X controls. However, EPA cannot determine a logical basis for considering the sum of the two emissions rates in the manner required by the District. The District's definition of RACT also fails to require any measurable degree of control that would demonstrate that the technology used is technically or economically appropriate. With respect to the method used to regulate combustion adjustments, the District must replace the equation with a technically justifiable method to regulate combustion adjustments. In order to correct the deficiency in RACT requirements for sources with a heat input of 20 MMBTU or greater but less than 50 MMBTU the District must either (1) revise the regulation to provide specific numeric emission limitations or appropriate and enforceable operating and maintenance requirements for these sources or (2) revise the regulation to require specific emission limitation(s) for each source or provide an adequate justification that it is unreasonable for the source to comply with RACT considering technological and economic feasibility.

Source-specific (Generic) RACT Provisions

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 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 Division Directors, EPA outlined the necessary prerequisites for approving a state's (or in this case the District's) generic RACT regulation. In this memo, 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 memo 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.

Exemptions

Subsections 805.7(a)(1) and (2) allow major sources of NO_X 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, to be excluded when calculating potential to emit to determine major source applicability. Subtitle I embodies all of the District's air pollution control regulations. Subsections 805.7(a)(1) and (2) allow all NO_X sources subject to any other regulation in subtitle I of 20 DCMR or sources receiving LAER determinations since January 1, 1990 to be declared RACT without EPA approval via the SIP process.

EPA Evaluation

These provisions are unacceptable because EPA cannot delegate the responsibility of approving RACT determinations to a state or other regulatory authority such as the District. The CAA requires that EPA make a determination as to whether a major source or source category's requirement constitutes RACT. EPA cannot agree to LAER or any other determination under subtitle I of 20 DCMR as RACT since those determinations have not been before the EPA for review. Therefore, subsections 805.7(a)(1) and (2) are inconsistent with the CAA and the District must correct this deficiency.

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 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, since 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.

Sources subject to the emission limits for asphalt concrete plants that choose to perform testing, as opposed to CEM, are required to meet additional emission limits that are unidentifiable and technically infeasible. Subsection 805.6(c)(2)(C) requires testing to demonstrate that the emission rate does not exceed the applicable emission rate in subsection 805.5. The latter section establishes presumptive RACT technology and specific emission limits for fossil-fuel steam-generating units. The District's rule should require that asphalt concrete sources subject to the emission limits in subsection 805.6 to conduct testing to demonstrate compliance with emission limits for asphalt concrete sources established in 805.6.

Similarly, in subsection 805.7(d)(2)(C), sources subject to case-by-case RACT determinations that conduct testing (as opposed to

continuous emission monitoring) are required to demonstrate compliance with the NO_X emission rate specified in subsection 805.5. The reference to subsection 805.5 is incorrect in that this section establishes emission limits specifically for fossil-fuel steam-generating units. Subsection 805.7(d)(2)(C) should require affected sources to conduct testing to demonstrate compliance with the limits contained in an approved emission control plan that has been submitted and approved by EPA as a SIP revision.

EPA has evaluated section 805 of the District's regulation for consistency with the CAA and EPA regulations, and has found, as noted above, certain deficiencies which result in enforceability problems and in the regulation of a smaller population of sources than required by the CAA. A more detailed description of the District's submittal and EPA's evaluation are included in the Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Final Action

EPA is conditionally approving section 805, subtitle I of 20 DCMR, the requirements to implement RACT on major sources of NO_X, submitted by the District of Columbia into the District's SIP. In a letter dated December 16, 1998, the District of Columbia Department of Health requested EPA to propose conditional approval of the District's NO_X RACT SIP and committed to correct deficiencies identified in today's rulemaking and resubmit such revisions to EPA as a SIP submittal.

EPA is conditionally approving section 805 of the District of Columbia's NO_X RACT regulation, pursuant to section 110(k)(4) of the CAA on the basis that section 805 strengthens the SIP by establishing compliance dates and RACT limits on major categories of NO_X sources. The District must correct the deficiencies enumerated below within twelve months of the effective date of today's rulemaking. If the District fails to revise and resubmit the regulation within one year of this conditional approval the conditional approval will convert to a disapproval.

1. The District must revise subsection 805.1(c) to allow exemptions only where there are federally-enforceable restrictions that limit NO_X emissions to less than 50 tons per year.

2. With respect to the method used to regulate combustion adjustments in subsection 805.8, the District must replace the equation with a technically justifiable method to regulate combustion adjustments. In order to correct the deficiency in RACT requirements for sources with a heat input of 20 MMBTU or greater but less than 50 MMBTU, the District must either (1) revise the regulation to provide specific numeric emission limits or appropriate and enforceable operating and maintenance requirements for these sources or (2) revise the regulation to require specific emission limit(s) for each source or provide an adequate justification that it is unreasonable for the source to comply with RACT considering technological and economic feasibility.

3. The District must remove the exclusions found in subsections 805.7(a)(1) and (2) for the purposes of determining potential emissions.

4. The District must correct subsection 805.7(d)(2)(C) to require affected sources to conduct testing to demonstrate compliance with the limitations contained in an approved emission control plan that has been submitted and approved by EPA as a SIP revision.

5. The District must correct subsection 805.6(c)(2)(C) to require that asphalt concrete sources subject to the emission limits in subsection 805.6 conduct testing to demonstrate compliance with emission limits for asphalt concrete sources.

If the District fails to meet the conditions of this approval action, the EPA Regional Administrator will make a finding, by letter, that the conditional approval is converted to a disapproval and the clock for imposition of sanctions under section 170(a) of the CAA will start as of the date of the letter. Subsequently, a document will be published in the **Federal Register** announcing that the SIP revision has been disapproved.

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 conditionally approve the District's NO_X RACT SIP revision if adverse comments are filed. This rule will be effective on April 26, 1999 without further notice unless EPA receives adverse comment by March 29, 1999. 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.

III. Administrative Requirements

A. Executive Order 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 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 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 is not an economically significant regulatory action as defined

by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

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 EPA complies by consulting, Executive Order 13084 requires EPA to 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 conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. 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).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

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. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to conditionally approve the District of Columbia's NO_X RACT regulations in section 805, subtitle I of 20 DCMR, must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 1999. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 12, 1999.

Thomas C. Voltaggio,

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. Section 52.473 is amended by adding paragraph (c) to read as follows:

§ 52.473 Conditional approval.

* * * * *

(c) The District of Columbia's January 13, 1994 SIP submittal of section 805 of the District of Columbia Municipal Regulation (DCMR) No. 20, Subtitle I, ''Reasonably Available Control Technology (RACT) for Major Stationary Sources of Oxides of Nitrogen (NO_X),'' is conditionally approved based on certain contingencies. The condition for approval is to revise section 805 and resubmit the section as a SIP revision

within one year of April 26, 1999, according to the following:

(1) The District must revise subsection 805.1(c) to allow exemptions only where there are federally-enforceable restrictions that limit NO_X emissions to less than 50 tons per year.

(2) With respect to the method used to regulate combustion adjustments in subsection 805.8, the District must replace the equation with a technically justifiable method to regulate combustion adjustments. In order to correct the deficiency in RACT requirements for sources with a heat input of 20 MMBTU or greater but less than 50 MMBTU the District must either revise the regulation to provide specific numeric emission limits or appropriate and enforceable operating and maintenance requirements for these sources, or revise the regulation to require specific emission limit(s) for each source or provide an adequate justification that it is unreasonable for the source to comply with RACT considering technological and economic feasibility.

(3) The District must remove the exclusions found in subsections 805.7(a)(1) and (2) for the purposes of determining potential emissions.

(4) The District must correct subsection 805.7(d)(2)(C) to require affected sources to conduct testing to demonstrate compliance with the limits contained in an approved emission control plan that has been submitted and approved by EPA as a SIP revision.

(5) The District must correct subsection 805.6(c)(2)(C) to require that asphalt concrete sources subject to the emission limits in subsection 805.6 conduct testing to demonstrate compliance with emission limits for asphalt concrete sources.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6302–1]

Wyoming: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Wyoming has applied for Final authorization of the first revision (Amendment A) to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the Wyoming Department of Environmental Quality's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. EPA is authorizing the State program revision through this immediate final action. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as a proposal to authorize the revision should the Agency receive adverse comment. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize Wyoming's hazardous waste program revision will take effect as provided below.

DATES: This Final authorization for Wyoming will become effective without further notice on April 26, 1999, unless EPA receives adverse comment by March 29, 1999. Should EPA receive such comments, EPA will publish a timely withdrawal informing the public that the rule will not take effect.

ADDRESSES: Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. Copies of the Wyoming program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying at the following locations: EPA Region VIII, from 8:00 AM to 4:00 PM, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139; or Wyoming Department of Environmental Quality (WDEQ), from 8:00 AM to 5:00 PM, 122 W. 25th Street, Cheyenne, Wyoming 82002, contact: Marisa Latady, phone number: (307) 777–7541.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

SUPPLEMENTARY INFORMATION:

A. Background

States with Final authorization under Section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) Parts 124, 260 through 266, 268, 270, 273 and 279.

B. Wyoming

Wyoming initially received Final Authorization on October 4, 1995, effective October 18, 1995, to implement its base hazardous waste management program (60 FR 51925).

On December 4, 1997, Wyoming submitted a final complete program revision application, seeking authorization of its first program modification (Amendment A) in accordance with 40 CFR 271.21. EPA reviewed Wyoming's application and now makes an immediate final decision, subject to receipt of adverse written comment, that Wyoming's hazardous waste program modification, adopted June 17, 1996, satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Wyoming Final Authorization for the program modification contained in the revision application designated as Amendment A.

Today Wyoming is seeking authority to administer the following Federal requirements promulgated between July 1, 1994 and June 30, 1995:

Federal citation	State analog[1]
Testing & Monitoring Activities Amend I [60 FR 3089–3095, 01/13/95] (Checklist 139).	Ch 1, Sec 1(g)(i)(L).
Testing & Monitoring Activities Amend II [60 FR 17001–17004, 04/04/95] (Checklist 141).	Ch 1, Sec 1(g)(i)(L).