



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2022-0790; FRL-9915-02-R3]

Air Plan Approval; District of Columbia; Removal of Stage II Gasoline Vapor Recovery Program Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the District of Columbia. This SIP revision removes requirements for gasoline vapor recovery systems (VRS) installed on gasoline dispensers, the purpose of which are to capture emissions from vehicle refueling operations, otherwise known as vacuum-assist Stage II vapor recovery. Specifically, this action would remove from the approved SIP the prior-approved Stage II requirements applicable to new and existing gasoline dispensing facilities (GDFs). The District of Columbia SIP revision includes a demonstration that removal of Stage II requirements is consistent with the Clean Air Act (CAA) and meets all relevant EPA guidance.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2022-0790. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., 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 through www.regulations.gov, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Lewis, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, PA 19103. The telephone number is (215) 814-2026. Mr. Adam Lewis can also be reached via electronic mail at *Lewis.Adam@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 10, 2024 (89 FR 1479), EPA published a notice of proposed rulemaking (NPRM) for the District of Columbia (the District). In the NPRM, EPA proposed approval of the District's request to revise its requirements for Stage II vapor recovery for new and existing GDFs located within the District. The formal SIP revision was submitted by the Department of Energy and Environment (DOEE) of the District of Columbia on May 18, 2022.

II. Summary of SIP Revision and EPA Analysis

The details of the District's May 18, 2022, SIP submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated in this final rule. For this detailed information, the reader is referred to the EPA's January 10, 2024, proposed rulemaking (89 FR 1479). The NPRM also contained a detailed analysis showing that the District's removal of the Stage II requirements would not interfere with any of the District's ability to attain or maintain any national ambient air quality standard (NAAQS), or any other applicable requirement of the CAA. The public comment period for the NPRM closed on February 9, 2024.

III. EPA's Response to Comments Received

EPA received two comments from private citizen commentors which can be found in the docket. Both comments, which were adverse, are discussed below.

Comments: Both private citizen commentors disagree with the proposed approval to allow the District to remove from the currently approved SIP the prior-approved Stage II requirements applicable to new and existing GDFs. The commentors' similarly stated reason for disagreeing with the proposed approval is that the removal of Stage II VRS may be cost effective

but would lead to poorer air quality and adversely impact public health. One commenter asserted that the “proposal states that this removal of requirements is necessary due to conflicts with other systems, but did not explicitly explain how these other systems will be regulated to make up for it.”¹

Response: Both commenters misunderstand the latest science that EPA has relied on in its decision. Based on DOE’s analysis, on-board refueling vapor recovery (ORVR) alone is more effective at reducing volatile organic compound (VOC) emissions in the District, than the use of ORVR in conjunction with vacuum-assist Stage II VRS. In other words, since the use of ORVR alone (which is in widespread use) in the District achieves more VOC emissions control and reduction than does using ORVR plus vacuum-assist Stage II VRS, in removing the Stage II VRS requirement there is no loss of emissions control to be made up for. Furthermore, EPA’s approval does not consider the relative cost effectiveness of ORVR versus Stage II VRS, but was rather based in large part on the DOE study that showed that continued use of the two incompatible systems would lead to less reduction in VOC than the use of ORVR alone.

Specifically, EPA acknowledges that one of the commenters referenced an article,² indicating that Stage II VRS was an effective tool in reducing VOCs of the time that article was published. However, the article’s estimate of “81% and 93% relative to a conventional station” for the efficiency of Stage II VRS is no longer accurate due to the widespread adoption of ORVR technology, which captures gasoline vapor when gasoline-powered vehicles are refueled. EPA adopted the ORVR regulations for passenger vehicles in 1994, and new passenger cars built in model year 1998 and later were required to be equipped with ORVR systems, followed by model year 2001 and later light-duty trucks. ORVR equipment has been installed on nearly all new gasoline-powered light-duty cars, light-duty trucks, and heavy-duty vehicles manufactured since

¹ Comment On EPA-R03-OAR-2022-0790-0001 Air Quality State Implementation Plans; Approvals and Promulgations: District of Columbia; Removal of Stage II Gasoline Vapor Recovery Program Requirements, www.regulations.gov/comment/EPA-R03-OAR-2022-0790-0009

² David L. MacIntosh, Dee A. Hull, Howard S. Brightman, Yukio Yanagisawa, P. Barry Ryan, A method for determining in-use efficiency of stage II vapor recovery systems, Environment International, Volume 20, Issue 2, 1994, Pages 201-207, ISSN 0160-4120, doi.org/10.1016/0160-4120(94)90137-6.

2006. ORVR systems have been considered to be in widespread use since 2012 (see the proposed approval for a full discussion of the 2012 widespread use finding). Per the 2012 EPA guidance on removing Stage II VRS, the in-use control efficiency for ORVR systems is estimated to be 98%.³

The DOEE analysis discussed in the proposed approval demonstrates that within the District the continued operation of the vacuum-assist Stage II VRS when coupled with the prevalence of ORVR-equipped vehicles results in increased, not decreased, VOC emissions, due to the incompatibility between the vacuum-assist type Stage II VRS equipment and ORVR. The DOEE analysis further demonstrates that allowing the decommissioning of Stage II VRS equipment on or after January 1, 2022, will result in additional emissions decreases, especially when combined with the increasing prevalence of ORVR-equipped vehicles. The associated costs or cost effectiveness of either retaining or decommissioning existing Stage II VRS was not a factor in EPA's proposed approval.

As indicated in the NPRM, EPA ensured that: (1) in accordance with CAA section 110(l)'s non-interference requirement, this SIP revision demonstrated that the proposed action would not interfere with attainment of the NAAQS or reasonable further progress towards attainment of any NAAQS; (2) in accordance with CAA section 184(b)(2)'s "comparable measures" requirement, that this SIP revision would achieve comparable or greater emission reductions than the gasoline vapor recovery requirements contained in CAA section 182(b)(3); and (3) that this SIP revision satisfies the anti-backsliding requirements of CAA section 193. EPA also found that in its submittal, DOEE demonstrated that there is widespread use of ORVR systems throughout the motor vehicle fleet in the District, and that implementation of the rule in the proposed SIP revision would comply with CAA sections 110(l), 184(b)(2), and 193. The submittal sufficiently demonstrates that the District followed current EPA guidance and

³ EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures (August 7, 2012).

demonstrated that the removal of Stage II VRS will not interfere with any requirements concerning attainment or reasonable progress of any NAAQS, or any other applicable requirement of the CAA.

IV. Final Action

EPA is approving the District's May 18, 2022, SIP revision that incorporates revisions to Title 20 of the District of Columbia Municipal Regulations (DCMR) Chapter 7 Section 705 Stage II Vapor Recovery, with an effective date of April 8, 2022. The approved changes to Section 705 Stage II Vapor Recovery consist of revisions to subsections 705.1 through 705.14 as well as the addition of subsections 705.15 through 705.17. EPA is approving this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA guidance, and it will not interfere with attainment or maintenance of the ozone NAAQS or any other CAA applicable requirement.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of District of Columbia's revised Title 20 DCMR Chapter 7 Section 705 Stage II Vapor Recovery regulation described in 40 CFR part 52 as described in Sections I, II and IV. of this preamble. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁴

VI. Statutory and Executive Order Reviews

⁴ 62 FR 27968 (May 22, 1997).

A. General Requirements

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 CAA. Accordingly, this action merely approves 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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); and
- 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 Clean Air Act;

In addition, the SIP is not approved to apply on any Indian reservation land or in any

other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The DOEE did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. 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 to remove Stage II requirements for the District of Columbia may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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. Amend § 52.470, paragraph (c) by:

a. Revising the entries “Section 705.1 through 705.3” and “Section 705.4 through 705.14”; and

b. Adding the entry “Section 705.15 through 705.17” immediately after the entry “Section 705.4 through 705.14”.

The revisions and addition read as follows:

§ 52.470 Identification of plan.

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(c) * * *

EPA-Approved Regulations and Statutes in the District of Columbia SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
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Chapter 7 Volatile Organic Compounds				
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Section 705.1 through 705.3	Stage II Vapor Recovery	04/08/2022	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Includes revisions removing requirements for gasoline vapor recovery systems installed on gasoline dispensers.
Section 705.4 through 705.14	Stage II Vapor Recovery	04/08/2022	[Insert date of publication]	Includes revisions removing

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
			<u>in the Federal Register], [Insert Federal Register citation]</u>	requirements for gasoline vapor recovery systems installed on gasoline dispensers.
Section 705.15 through 705.17	Stage II Vapor Recovery	04/08/2022	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Includes additions removing requirements for gasoline vapor recovery systems installed on gasoline dispensers.
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