**DEPARTMENT OF energy and ENVIRONMENT**

**NOTICE OF SECOND PROPOSED RULEMAKING**

**Greenhouse Gas (GHG) Intensity Limits for Fuels Used in Fuel-Burning Equipment**

The Director of the Department of Energy and Environment (“DOEE”), pursuant to the authority set forth in Sections 5 and 6 of the District of Columbia Air Pollution Control Act of 1984 (the “Act”), effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 & 8-101.06 (2013 Repl. & 2019 Supp.)); Section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4) (2013 Repl. & 2019 Supp.)); and Mayor’s Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to amend Chapter 8 (Air Quality — Asbestos, Sulfur, Nitrogen Oxides and Lead), to Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register.*

On June 28, 2019, DOEE published a proposed rulemaking to establish a maximum carbon dioxide (CO2) intensity threshold of 180 lbs/mm BTU for fuel burned within the District, either for electricity or heating. See 66 DCR 7688 (June 28, 2019). The proposed rule established a compliance deadline of December 31, 2019. One comment letter was submitted to the rulemaking docket. The commenter requested that DOEE provide a rationale for the chosen limit and also encouraged DOEE to consider alternative options for complying with the proposed limit, specifically recommending the following alternatives:

* Provide for an emission limitation averaging period that is greater than one day and allow averaging across fuels.
* Allow for a site-wide average limitation for facilities that operate multiple emissions units.
* Include an option to create or procure CO2 allowances for emissions above the limitation.
* Provide an option in the rule to set a source-specific CO2 emission limit.
* Provide an allowance for backup fuels that are unable to meet the limitation such as an annual fuel usage limitation or capacity factor limitation.
* Extend the compliance deadline to allow a longer compliance timeline for existing sources.

DOEE has evaluated these suggestions and has determined that the last suggestion, an extension of the compliance deadline, is the most consistent with the purpose of the rule and is therefore amending and republishing the rule for purposes of making this change. DOEE is proposing a compliance deadline of March 31, 2023, with an option to request an extension until March 31, 2025. The 2023 deadline coincides with federal requirements to evaluate the adequacy of existing reasonably available control technologies (RACT) and establish and implement new standards where appropriate. Facilities that are subject to this rule are also likely to be subject to the RACT requirements, and therefore would likely already be required to perform upgrades to their emission unit(s) by 2023. DOEE is proposing to align the two deadlines so that facilities may evaluate compliance options for both regulatory requirements at the same time. DOEE is reopening the rulemaking in order to solicit comments on whether the proposed deadline is appropriate in light of the rule’s purpose to regulate the burning of carbon intense fuels in the District and the ability of facilities to make the necessary upgrades to comply. For a more detailed response to the comments, including the rationale for the chosen limit, please see DOEE’s website at <https://doee.dc.gov/service/public-notices-hearings>.

**Chapter 8,** **AIR QUALITY — ASBESTOS, SULFUR, NITROGEN OXIDES AND LEAD, of Title 20 DCMR, Environment, is amended to read as follows:**

**The title of the chapter is amended to read as follows:**

**CHAPTER 8 AIR QUALITY - ASBESTOS, SULFUR, NITROGEN OXIDES, LEAD, AND CARBON DIOXIDE**

**A new Section 807 is added to read as follows:**

**807 FUEL CARBON INTENSITY STANDARDS FOR FACILITIES OPERATING WITHIN THE DISTRICT**

807.1 *Applicability.* The requirements of this section shall apply to all fuel burning equipment subject to the requirements of 20 DCMR § 200.

807.2 *Emissions limits.* The following limitation shall apply to each individual fuel type or component fuel before it is blended or combined with any other fuel. The requirements of this part cannot be met by combining a fuel that exceeds the emission limits of this part with a fuel that does meet the threshold in order to lower the overall emission rate. In accordance with the deadlines specified in § 807.5, any new or existing fuel burning equipment is required to meet the following:

1. An emission rate of 180 pounds of CO2 per million Btu of heat input, daily average basis, shall not be exceeded for each fossil fuel combusted; and

(b) Each component fuel shall meet the threshold set forth in paragraph (a) and may not be blended with another lower CO2 emitting fuel to achieve compliance with this part.

807.3 *Deemed Compliance.* Fuel oil meeting the requirements of § 801, biomass, digester gas, kerosene, propane, and natural gas are deemed compliant with this part without further compliance determination, reporting, or certification required.

807.4 *Compliance Determination.* The owner or operator of each emission source subject to this section, and using any fuel not deemed compliant pursuant to
§ 807.3, shall determine compliance with the requirements of § 807.2 by the following method:

(a) Determine the gross calorific value (heat content) of the fuel as follows:

(1) For coal, sample and test in accordance with ASTM Method D5865 or other method approved in advance by the Department pursuant to § 502.3;

(2) For other fuels, sample and test in accordance with a test method approved in advance by the Department pursuant to § 502.3; and

(3) Perform such testing at least once per calendar year to represent the fuel used since the last test, except as specified in
§ 807.4(a)(4); or

(4) In lieu of the testing specified in § 807.4(a)(1-3), fuel specifications obtained from the fuel supplier, with an updated version obtained annually from said fuel supplier, and citing a test method approved by the Department, may be used; and

(b) Determine the CO2 mass emissions from the emission source by direct measurement or fuel analysis as follows:

(1) To determine CO2 emissions by direct measurement, install, maintain, and operate CEMS to monitor CO2 or O2 concentration in combination with a continuous parametric monitoring system (CPMS) for stack gas flow rate in accordance with the relevant provisions of 40 CFR part 75 and use the procedures in 40 CFR part 75, Appendix F to determine CO2 mass emissions; or

(2) To determine CO2 emissions by fuel analysis, follow the procedures in 40 CFR part 75, Appendix G;

(c) If fuel blending is used, only the fuel analysis method specified in
§ 807.4(b)(2) shall be an acceptable method for determining CO2 mass emissions for use in determining compliance with this section in order to document compliance for each component fuel as required by § 807.2(b);

(d) Monitor and record the amount of fuel used each day; and

(e) Using the information obtained by the procedures in § 804.7(a) through (d), determine and record the pounds of CO2 per million Btu of heat input, daily average basis, for each fossil fuel combusted each day from each emission unit covered by this section.

807.5 *Compliance Deadlines.* The owner or operator of each emission source subject to this section shall comply with the requirements of this section in accordance with the following schedule:

(a) Except as specified in § 807.5(b), the owner or operator shall fully comply with the requirements of this section by March 31, 2023;

(b) The owner or operator may obtain an extension to no later than March 31, 2025 to the deadline in § 807.5(a) if a District-enforceable condition has been placed upon source operations limiting use of the otherwise non-compliant fuel type or component fuel to the following circumstances after March 31, 2023:

(1) For periods of tuning and testing on the otherwise non-compliant fuel type or component fuel, not to exceed a total of forty-eight (48) hours during any calendar year;

(2) During periods of involuntary natural gas supply interruptions, which does not include interruptions resulting from gas curtailment resulting from an interruptible gas supply contract;

(3) During periods of extreme cold weather where the facility affected by this rule would not be capable of providing a reasonable service to its supported facility or facilities through use of other fully compliant fuel types; and

(4) During any “Force Majeure” event which prevents the source from providing a reasonable level of service to its supported facility or facilities through use of other fully compliant fuel types, where “Force Majeure” is defined as any of the following:

(A) Act of God (such as, but not limited to, fires, explosions, earthquakes, hurricanes, tornados, tidal waves, and floods);

(B) War, hostilities (whether war is declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;

(C) Rebellion, revolution, insurrection, or military or usurped power, or civil war;

(D) Riot, strikes, or lock outs associated with fuel delivery; and

(E) Acts or threats of terrorism that impact or threaten to impact the source; and

(c) Whenever an extension is obtained under § 807.5(b), the Department shall establish sufficient record keeping and reporting conditions under a permit issued pursuant to § 200 to ensure that the Department is able to determine that any and all operations using the otherwise non-compliant fuel type or component fuel is only used in accordance with the circumstances specified in §§ 807.5(b)(1) through (4).

807.6 *Reporting and Compliance Certification.* The owner or operator of each emission source subject to this section, and using any fuel not deemed compliant pursuant to § 807.3, shall submit to the Department, within one calendar month following the end of each calendar quarter, a report of the daily average pounds of CO2 per million Btu of heat input emitted from the use of any such fuel during that calendar quarter. The owner or operator shall certify the truth, accuracy, and completeness of each report by the method specified in 20 DCMR § 301.4.

All persons desiring to comment on the proposed rulemaking should file comments in writing not later than thirty (30) days after publication of this notice in the *D.C. Register*. Comments should be clearly marked “Public Comments: Section 807 of the Air Quality Regulations” and filed with DOEE, Air Quality Division, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, Attention: Stephen Ours, or e-mailed to airqualityregulations@dc.gov. Copies of the above documents may be obtained from DOEE at the same address.