

On November 12, 1993 the State submitted a redesignation request. Section 175(A) requires submittal of a maintenance plan for areas that are redesignating to attainment. This maintenance plan must contain contingency measures which shall be implemented if a violation of the ozone standard occurs. Consequently, if the State's redesignation request is approved, the NO<sub>x</sub> requirements found in the maintenance plan for that area would, thereafter, apply as long as the area is designated attainment for the ozone standard.

This action will become effective on April 6, 1995.

#### IV. Miscellaneous

##### A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

##### B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

##### C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions

concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

##### D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. 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, Oxides of nitrogen, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: February 8, 1995.  
Norman R. Niedergang,  
Acting Regional Administrator.

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. 7401-7671(q).

##### Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (j) to read as follows:

##### § 52.1174 Control strategy: Ozone.

\* \* \* \* \*

(j) Approval—On November 12, 1993, the Michigan Department of Natural Resources submitted a petition for exemption from the oxides of nitrogen requirements of the Clean Air Act for the Detroit-Ann Arbor ozone nonattainment area. The submittal pertained to the exemption from the oxides of nitrogen requirements for conformity, inspection and maintenance, reasonably available control technology, and new source review. These are required by sections 176(c), 182(b)(4), and 182(f) of the 1990 amended Clean Air Act, respectively. If a violation of the ozone standard occurs in the Detroit-Ann Arbor ozone nonattainment area, the exemption shall no longer apply.

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#### 40 CFR Part 52

[CA 102-8-6860a; FRL-5160-4]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that any deficiencies in these rules noted in prior proposed rulemakings have been corrected. The rules control VOC emissions from pump and compressor seals at petroleum refineries, chemical plants, bulk plants, and bulk terminals; large commercial bakeries; and polyester resin operations. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This final rule is effective on May 8, 1995 unless adverse or critical comments are received by April 6, 1995. If the effective date is delayed, a timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, DC 20460,  
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1197.

**SUPPLEMENTARY INFORMATION:**

**Applicability**

The BAAQMD rules being approved into the California SIP include: 8-25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; 8-42, Large Commercial Bakeries; and 8-50, Polyester Resin Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on September 28, 1994.

**Background**

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Bay Area. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment

guidance.<sup>1</sup> EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Francisco-Bay Area (Bay Area) is classified as moderate;<sup>2</sup> therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on September 28, 1994, including the rules being acted on in this document. This notice addresses EPA's direct-final action for the BAAQMD's Rules 8-25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; 8-42, Large Commercial Bakeries; and 8-50, Polyester Resin Operations. The BAAQMD adopted Rules 8-25 and 8-42 on June 1, 1994 and Rule 8-50 on June 15, 1994.

These submitted rules were found to be complete on November 22, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V<sup>3</sup> and are being finalized for approval into the SIP.

Rule 8-25 controls volatile organic compound (VOC) emissions from pumps and compressors; Rule 8-42 controls VOC emissions from bakery ovens; and Rule 8-50 controls VOC emissions from manufacturing or production operations using polyester resins. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

**EPA Evaluation and Action**

In determining the approvability of a VOC rule, EPA must evaluate the rule

<sup>1</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

<sup>2</sup> The Bay Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

<sup>3</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 8-25 is entitled, "Control of Volatile Organic Leaks from Synthetic Organic Chemical and Polymer Manufacturing" EPA-450/3-83-006, U.S. EPA, March 1984. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. For some source categories, such as large commercial bakeries (BAAQMD Rule 8-42) and polyester resin operations (BAAQMD Rule 8-50), EPA did not publish a CTG. In these cases, the district may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. EPA did publish an Alternative Control Technology Document (ACT) entitled, "Alternative Control Technology Document for Bakery Oven Emissions", EPA 453/R-92-017, December 1992 as guidance for bakery sources.

BAAQMD Rule 8-25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals improves the current SIP rule by:

- Revising the compliance dates.
- Adding definitions to clarify the rule.
- Adding visual inspection requirements.
- Adding new test method requirements.

- Adding recordkeeping requirements.
- Adding a "burden of proof" requirement for exemptions.

BAAQMD Rule 8-42, Large Commercial Bakeries, is a new rule which was adopted to control emissions of VOCs from large commercial bread bakeries. However, Rule 8-42 has been in effect in the Bay Area since 1989. The rule requires:

- All ovens to be vented to an emission control system.
- Sources to maintain records of the emissions control system's key operating parameters on a daily basis.
- Sources claiming exemptions to provide the necessary information to substantiate the exemption.
- Sources to use district method ST-32 for determination of emissions.
- The use of an emissions factor table for calculation of emissions.

BAAQMD Rule 8-50, Polyester Resin Operations, is a new rule which limits the emission of VOCs from polyester resin operations. The rule provides the following:

- Standards which affect the application and curing of resin, gel coat application and curing, and clean-up solvents.
- Standards for resins and gel coats are not applicable to polyester resin operations that choose to install and operate emission control equipment.
- Storage requirements for surface preparation and clean-up solvents.
- Recordkeeping requirements and test methods.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the BAAQMD's Rule 8-25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; Rule 8-42, Large Commercial Bakeries; and Rule 8-50, Polyester Resin Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. The final action on these rules serves as a final determination that any deficiencies in these rules noted in prior proposed rulemakings have been corrected.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the

Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 8, 1995, unless, by April 6, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 8, 1995.

#### Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) 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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 256-66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone,

Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 10, 1995.

Felicia Marcus,

*Regional Administrator.*

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

#### Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(199)(i)(A)(3) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

- (c) \* \* \*
- (199) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

(3) Rules 8-25 and 8-42, adopted on June 1, 1994 and Rule 8-50, adopted on June 15, 1994.

\* \* \* \* \*

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#### 40 CFR Parts 52 and 81

[TX-53-1-6843a; FRL-5163-5]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Texas; Approval of the Maintenance Plan for Victoria County and Redesignation of the Victoria County Ozone Nonattainment Area to Attainment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On July 27, 1994 the State of Texas submitted a maintenance plan and a request to redesignate the Victoria County, Texas ozone nonattainment area to attainment. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements. In this action, EPA is approving Texas' redesignation request because it meets the maintenance plan and redesignation