

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for PPG Industries, Inc.

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2003. 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 approving the Pennsylvania's source-specific RACT requirements to control NO<sub>x</sub> emissions from PPG Industries, Inc., in Crawford County, 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 5, 2003.

**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 NN—Pennsylvania**

2. Section 52.2020 is amended by adding paragraph (c)(201) to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(201) Revisions pertaining to NO<sub>x</sub> RACT determinations for a major source submitted by the Pennsylvania Department of Environmental Protection on October 30, 2002.

(i) Incorporation by reference.

(A) Letter of October 30, 2002 from the Pennsylvania Department of Environmental Protection transmitting source-specific NO<sub>x</sub> RACT determinations.

(B) Operating permit (OP) for PPG Industries, Inc., Crawford County, OP 20-145, effective May 31, 1995.

(ii) Additional Material—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(201)(i)(B) of this section.

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**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 275-0378a; FRL-7460-5]

**Revisions to the California State Implementation Plan, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The BAAQMD revision concerns the emission of volatile organic compounds (VOCs) from the transfer of gasoline to

stationary storage tanks and motor vehicle fuel tanks. The SMAQMD and SJVUAPCD revisions concern the emission of VOCs from the transfer of gasoline to motor vehicle fuel tanks. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on May 23, 2003 without further notice, unless EPA receives adverse comments by April 23, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rules and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rules and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B-102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

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

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of a rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdb/txt.htm>. This is not an EPA website and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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**I. The State's Submittal**

*A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the date that they were

revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Amended	Submitted
BAAQMD .....	8-7	Gasoline Dispensing Facilities .....	11/06/02	12/12/02
SMAQMD .....	449	Transfer of Gasoline into Vehicle Fuel Tanks .....	09/26/02	11/19/02
SJVUAPCD .....	4622	Gasoline Transfer into Motor Vehicle Fuel Tanks .....	09/19/02	11/19/02

On February 7, 2003, these submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of These Rules?*

We gave a limited approval/limited disapproval to a version of BAAQMD Rule 8-7, SMAQMD Rule 449, and SJVUAPCD Rule 4622 on July 25, 2001 (66 FR 38561).

*C. What Is the Purpose of the Submitted Rule Revisions?*

The purposes of the submitted revisions are to correct deficiencies cited by limited approval/limited disapproval actions.

**II. EPA's Evaluation and Action**

*A. How Is EPA Evaluating the Rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). SIP rules must require Reasonably Available Control Technology (RACT) for major sources in ozone nonattainment areas (see section 182(a)(2)(A)) and must fulfill the special requirements for gasoline vapor recovery in ozone nonattainment areas (see section 182(b)(3)(A)).

The BAAQMD regulates a CAA subpart 1 ozone nonattainment area, the SMAQMD regulates a severe ozone nonattainment area, and the SJVUAPCD regulates a serious ozone nonattainment area. All rules must fulfill the requirements of RACT.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *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 published in the May 25, 1988 **Federal Register**.

- EPA Draft *Model Rule, Gasoline Dispensing Facility-Stage II Vapor Recovery* (August 17, 1992).
- *Gasoline Vapor Recovery Guidelines*, EPA Region IX (April 24, 2000).
- *Model Volatile Organic Compound Rule for Reasonably Available Control Technology (RACT)*, Office of Air Quality Planning and Standards (June 1992).

*B. Do the Rules Meet the Evaluation Criteria?*

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACT. All of the deficiencies identified in our previous limited approval and limited disapproval action on BAAQMD Rule 8-7 have been adequately addressed as follows:

- [Paragraphs 302.3 and 306 require maintaining equipment free of defects as defined in California Health and Safety Code 41960.2(c). California Code of Regulations (CCR), Title 17, section 94006 should be referenced instead, because it contains a list of the defects.] Section 306 provides the required references.
- [Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.] Section 301.13 requires testing for Vapor Tightness in the preceding 12 months in order to operate Phase I equipment. Section 302.14 requires testing for Dynamic Back Pressure in the preceding 12 months in order to operate a balance Phase II vapor recovery system. Section 302.15 requires testing for Air-to-Liquid Volume Ratio in the preceding 12 months in order to operate a vacuum assist Phase II vapor recovery system. We consider the 12-month

interval to be reasonable for reverification of performance tests in the BAAQMD.

All of the deficiencies identified in our previous limited approval and limited disapproval action on SMAQMD Rule 449 have been adequately addressed as follows:

- [The rule should reference the specific EPA-approved test method to be used for performance tests and reverification of performance tests for an air-to-liquid volume ratio test and a liquid removal rate test.] Section 501 references the required performance tests.
- [Performance testing of vapor recovery equipment should start within 30 days of completion of construction of vapor recovery equipment.] Section 402.2 requires that any new or modified vapor recovery system take and pass all applicable performance tests within 30 days of completion of construction.
- [Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.] Section 402.3.a requires that reverification tests be performed within 30 days of the end of a 6-month period for over an average of 100,000 gallons per month throughput and within 30 days of the end of a 1-year period for less than an average of 100,000 gallons per month throughput. We consider the 6-month and 1-year intervals to be reasonable for reverification of performance tests in the SMAQMD. If In-Station Diagnostics are used, the test frequency may be every 2 years if approved by the APCO and allowed by the CARB Executive Order.
- [The rule should require that maintenance records, performance test records, reverification of performance test records, and gasoline throughput records (if an exemption is claimed) be kept with a retention period of at least two years.] Section 502.3 requires that

records be kept not less than 3 years, except that records for sources subject to Rule 207 must be kept for 5 years.

All of the deficiencies identified in our previous limited approval and limited disapproval action on SJVUAPCD Rule 4622 have been adequately addressed as follows:

- [Section 5.5.11 contains a reference to California Administrative Code, Title 17, section 94001, for the certification procedure that CARB uses for vapor recovery equipment. The correct reference is California Code of Regulations (CCR), Title 17, section 94011.] Section 5.5.11 is deleted, since the reference is not required.

- [Section 6.1 should require that maintenance records and reverification of performance test records be kept with a retention period of at least two years.] Sections 6.1.3, 6.1.4, and 6.1.5 require a records retention period of at least two years.

- [Section 6.2.2, which required that certified vapor recovery systems be tested with 60 days of installation or major modification, is deleted. This is less stringent than the SIP-approved rule. Performance testing of vapor recovery equipment should start within 30 days of completion of construction of vapor recovery equipment.] Section 6.2.1 requires that the Static Leak Test and the Dynamic Back Pressure Test be performed prior to or during the month designated as the expiration date in the Permit-to-Operate.

- [Section 6.3.1 should reference the specific EPA-approved test method to be used for performance tests and reverification of performance tests for an Air-to-Liquid Volume Ratio Test.] Section 6.3.1 lists the four common test methods to be used, including the Air-to-Liquid Volume Ratio Test.

- [Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.] Section 6.2.1 requires reverification of performance tests every 12 months for the Static Leak Test and Dynamic Back-Pressure Test and every 6 months for the Air-to-Liquid Volume Ratio Test. We consider the 6- or 12-month intervals to be reasonable for reverification tests in the SJVUAPCD. The Liquid Removal Rate Test must be performed whenever the amount of liquid in the vapor path exceeds 100 ml.

*C. Public Comment and Final Action*

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same

submitted rules. If we receive adverse comments by April 23, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 23, 2003. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**III. Background Information**

*Why Were These Rules Submitted?*

VOCs help produce ground-level ozone, smog, and particulate matter which harm human health and the environment. EPA has established National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations in order to achieve and maintain the NAAQS. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

**IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by

state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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**. 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).

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 May 23, 2003. 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 13, 2003.

**Alexis Straus,**

*Acting Regional Administrator, Region IX.*

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 *et seq.*

#### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(307) and (308) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(307) New and amended regulations for the following APCDs were submitted on November 19, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Sacramento Metropolitan Air Quality Management District.

(1) Rule 449, adopted on February 5, 1975 and amended on September 26, 2002.

(B) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4622, adopted on May 21, 1992 and amended on September 19, 2002.

\* \* \* \* \*

(308) New and amended regulations for the following APCDs were submitted on December 12, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(1) Rule 8-7, amended on November 6, 2002.

\* \* \* \* \*

[FR Doc. 03-6810 Filed 3-21-03; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[CA 275-0378c; FRL-7460-6]

#### Interim Final Determination To Stay and/or Defer Sanctions, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Interim final rule.

**SUMMARY:** EPA is making an interim final determination to stay and/or defer imposition of sanctions based on proposed approvals of revisions to the Bay Area Air Quality Management District (BAAQMD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern BAAQMD Rule 8-7, SMAQMD Rule 449, and SJVUAPCD Rule 4622.

**DATES:** This interim final determination is effective on March 24, 2003. However, comments will be accepted until April 23, 2003.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSDs at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

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

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at <http://>