

427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

*(D) Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. 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 the private sector, result from this action.

*(E) Audit Privilege and Immunity Law*

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Sections 3745.70-3745.73 of the Ohio Revised Code). U.S. EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

*(F) Submission to Congress and the General Accounting Office*

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by section 804(2).

*(G) 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 October 24, 1997. 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, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen Oxides, Transportation conformity.

Dated: August 8, 1997.

**David A. Ullrich,**  
*Acting Regional Administrator.*

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 KK—Ohio**

2. Section 52.1885 is amended by adding paragraph (a)(6) to read as follows:

**§ 52.1885 Control strategy: Ozone.**

(a) \* \* \*

(6) Approval—On June 10, 1997, Ohio submitted revisions to the maintenance plans for the Toledo area (including Lucas and Wood counties), the Cleveland/Akron/Lorain area (including Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage counties), and the Dayton-Springfield area (including Montgomery, Clark, Greene, and Miami counties). The revisions consist of an allocation of a portion of the safety margin in each area to the transportation conformity mobile source budget for that area. The mobile source budgets for transportation conformity purposes for Toledo are now: 35.85 tons per day of volatile organic compound emissions for the year 2005 and 35.19 tons per day of oxides of nitrogen emissions for the year 2005. The mobile source budgets for transportation conformity purposes for Cleveland-Akron-Lorain are now: 82.7 tons per day of volatile organic compound emissions for the year 2006 and 104.4 tons per day of oxides of nitrogen emissions for the year 2006.

For the Dayton-Springfield area, the oxides of nitrogen mobile source budget remains the same and the mobile source budget for volatile organic compounds is now 34.1 tons per day.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 034-0049a FRL-5880-4]

**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 a revision to the California State Implementation Plan. The revision concerns a rule from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). This revised rule controls VOC emissions from stationary storage tanks containing organic liquids. Thus, EPA is finalizing the approval of the BAAQMD rule revision into the California SIP under provisions of the CAA regarding EPA action on SIP submissions, EPA's general rulemaking authority, plan submissions, and enforceability guidelines. This rule is being incorporated into the SIP in accordance with the area's ozone maintenance plan for redesignation to attainment.

**DATES:** This action is effective on October 24, 1997 unless adverse or critical comments are received by September 24, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for BAAQMD Rule 8-5, Storage of Organic Liquids, are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection 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), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123-1095

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

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1199.

**SUPPLEMENTARY INFORMATION:**

**I. Applicability**

The rule being approved into the California SIP is BAAQMD Rule 8-5, Storage of Organic Liquids. This rule was submitted by the California Air Resources Board to EPA on May 24, 1994.

**II. 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 San Francisco Bay Area. 43 FR 8964, 40 CFR 81.305. 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). 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.

On November 12, 1993, BAAQMD submitted a request for redesignation to attainment of the ozone standard. Subsequently, EPA evaluated and approved BAAQMD's request and the San Francisco Bay Area was reclassified as an attainment area.<sup>1</sup>

This document addresses EPA's direct-final action for BAAQMD Rule 8-

5, Storage of Organic Liquids. The BAAQMD adopted this rule on January 20, 1993. This submitted rule was found to be complete on July 14, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V;<sup>2</sup> and is being finalized for approval into the SIP.

BAAQMD Rule 8-5 controls emissions of VOCs from stationary storage tanks containing organic liquids. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of BAAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. In accordance with the redesignation maintenance plan and at the request of BAAQMD, EPA is incorporating this revision into the SIP.

The following is EPA's evaluation and final action for this rule.

**III. EPA Evaluation and Action**

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, this rule was evaluated against the SIP enforceability guidelines found in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**" (EPA's 'Blue Book') and the EPA Region IX—California Air Resources Board document entitled "Guidance Document for Correcting VOC Rule Deficiencies" (April 1991), and against other EPA policies. In general, these guidance documents have been set forth to ensure that VOC and other rules are fully enforceable and strengthen or maintain the SIP.

Because BAAQMD Rule 8-5 is being incorporated into the SIP as part of the maintenance measures for the area's redesignation plan, the rule does not need to be evaluated for meeting the RACT emission limits pursuant to section 182(a) of the CAA. As an ozone maintenance measure, the rule is being evaluated against the emissions reductions assumed in the maintenance plan and the rule version currently incorporated in the SIP.

On June 10, 1992, EPA approved into the SIP a version of Rule 8-5, Storage

of Organic Liquids, that had been adopted by the BAAQMD on May 4, 1988. The BAAQMD Rule 8-5 submitted on May 24, 1994 includes the following significant changes:

- Section 116 has been added to include a clarifying exemption for underground gasoline storage tanks located at dispensing facilities subject to Regulation 8, Rule 7;

- Language exempting tanks that store liquids with a true vapor pressure of 0.5 psia or less has been moved from section 101 to section 117 (rule applicability has not changed);

- The following definitions have been added to section 200: approved emission control system, degassing, external floating roof tank, internal floating roof tank, true vapor pressure, organic compound, and viewport;

- Section 303 has been added to include requirements for above ground tanks with a capacity between 37.5 m<sup>3</sup> and 75 m<sup>3</sup>, storing organic liquids with a true vapor pressure greater than 1.5 psia;

- Section 400 has been modified to require periodic operator inspections, rather than simply making tanks available for APCO inspection;

- The outdated compliance schedules in sections 411 and 412 have been deleted;

- The following sections have been added: 502—tank cleaning annual source test requirement; 503—specifications for portable hydrocarbon detectors; and 605—pressure vacuum valve gas tight determination.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD Rule 8-5, Storage of Organic Liquids, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and pursuant to EPA's authority under section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

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

<sup>1</sup> The San Francisco Bay Area was redesignated to attainment and was classified by operation of law pursuant to sections 107(d) upon the date of enactment of the CAA. See 60 FR 27028 (May 22, 1995).

<sup>2</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5824) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

or critical comments be filed. This action will be effective October 24, 1997, unless, within 30 days of its publication, 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 October 24, 1997.

**IV. Administrative Requirements**

**A. Executive Order 12866**

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

**B. Regulatory Flexibility Act**

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.

SIP approvals under section 110 and 301 and subchapter I, part D of the Clean Air Act 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, the Administrator certifies 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 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).

**C. 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 costs to State, local, or tribal governments in the aggregate; or to the 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 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**D. Submission to Congress and the General Accounting Office**

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

**E. 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 October 24, 1997. 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, 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: August 11, 1997.

**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]**

**Subpart F—California**

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

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

2. Section 52.220 is amended by adding paragraphs (c)(197)(i)(B)(2) to read as follows:

**Section 52.220 Identification of plan.**

\* \* \* \* \*

(197) \* \* \*

(i) \* \* \*

(B) \* \* \*

(2) Rule 8-5, adopted on January 20, 1993.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 157-0046a; FRL-5881-1]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on a revision to the California State Implementation Plan. The revision concerns a rule from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule 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). The revised rule controls VOC