

each distant broadcast signal be attributed throughout the entire subscription base, even if many subscribers do not actually receive the signal. The Copyright Office has historically required such attribution, based upon its interpretation that the Copyright Act permits only allocation of gross receipts among subscriber groups for partially local/partially distant signals. Does the 1992 Cable Act, or other circumstances, warrant a change in this interpretation? If so, on what basis?

(b) It has been suggested by some that the Copyright Office should permit creation of subscriber groups for *a la carte* broadcast signals, and allow cable operators to allocate gross receipts only to those subscribers who select and receive a particular signal. Thus, for example, if a cable system has 1000 subscribers and only 500 of them choose to receive superstation X, the distant signal equivalent (DSE) value generated by superstation X would only be applied against the gross receipts generated from the 500 subscribers who took the superstation, as opposed to applying it against the system's total gross receipts.<sup>4</sup>

One concern with allowing that would be that it would offer the cable system an incentive to pull its distant signals from its basic tier offering, and offer them only as *a la carte* signals, thus reducing the subscriber base from which the royalty is calculated.

The Cable Act of 1992 has made it more difficult for cable systems to restructure their distant signal offerings because it states that, for a basic tier subject to rate regulation, "such basic service tier shall, at a minimum, consist of \* \* \* (iii) any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station." 47 USC 543 (b) (7) (iii).

Therefore, for distant signals that are imported by means other than satellite carrier, if the cable system offers it to one subscriber, it must offer it to all on the basic tier. In 1989, 48.2% of all instances of distant signal carriage on a Form 3 cable system were by means other than satellite carrier. 1989 Cable Royalty Distribution Proceeding, 57 FR 15286, 15294 (1992).

However, 51.8% of distant signal carriage in 1989 was by means of satellite carrier, and those signals could be pulled from the basic tier without

violating the 1992 Cable Act. In addition, cable systems that are not subject to basic tier rate regulation because there is effective competition in the system's franchise area, are also free to restructure.

What would be the statutory basis for allowing *a la carte* allocation, and what effect would it have on the total amount of royalties paid?

(c) If the Copyright Office allowed the type of gross receipts allocation described in question (b), what is the proper royalty rate to assess against the gross receipts of each subscriber group? For example, if a cable system carried two distant signals on an *a la carte* basis, one a permitted signal and the other a non-permitted signal at the 3.75% rate, how can it be determined which subscriber group is receiving the less expensive base rate permitted signal, and which group is receiving the more expensive 3.75% rate non-permitted signal? Obviously, there is a powerful incentive for the cable operator to assign the 3.75% rate to the signal with the fewest subscribers, and hence the lowest amount of gross receipts. A similar problem occurs in applying the decreasing rates for permitted signals. Are there any fixed factors which the Copyright Office could apply to prevent the repeated occurrence of applying the lower rate against the higher gross receipts? What effect would that have on the total royalty pool generated by section 111?

The Copyright Office requests comment on the questions raised in this extended comment period, as well as any other issues related to compulsory license royalty payments for *a la carte* offerings of broadcast signals.

#### List of Subjects

Cable compulsory license; Cable television systems.

Dated: December 29, 1994.

**Marybeth Peters,**  
*Register of Copyrights.*

Approved by:

**James H. Billington,**  
*The Librarian of Congress.*

[FR Doc. 95-439 Filed 1-6-95; 8:45 am]

BILLING CODE 1410-31-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OAQPS No. CA-95-6639; FRL-5134-4]

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

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from polystyrene foam, polyethylene, and polypropylene manufacturing and polyester resin operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them 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:** Comments must be received on or before February 8, 1995.

**ADDRESSES:** Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A-5-3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the new rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 2020 "L" Street,  
Sacramento, CA 95814.

San Joaquin Valley Unified Air  
Pollution Control District 1999  
Tuolumne Street, Fresno, CA 93721.

**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

<sup>4</sup>This example assumes the cable system is an SA-3 form system, and therefore makes royalty payments based on the number of DSE's carried.

Francisco, CA 94105-3901, (415) 744-1197.

#### SUPPLEMENTARY INFORMATION:

##### Applicability

The rules being proposed for approval into the California SIP include: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4682, Polystyrene Foam, Polyethylene, and Polypropylene Manufacturing; and SJVUAPCD Rule 4684, Polyester Resin Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on July 13, 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 CAA or pre-amended Act), that included the San Joaquin Valley Air Basin which includes the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,<sup>1</sup> Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964; 40 CFR 81.305. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Because these areas were 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.<sup>2</sup> 40 CFR 52.222. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were 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. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q (CAA or Act). In amended sections 182(b)(2) (B) and (C) of the CAA, Congress statutorily required nonattainment areas to submit

<sup>1</sup> At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

<sup>2</sup> This extension was not requested for the following counties: Kern, Kings, Madera, Merced and Tulare. Thus, the attainment date for these counties remained December 31, 1982.

reasonably available control technology (RACT) rules for all major sources of VOCs by November 15, 1992. The San Joaquin Valley Air Basin is classified as serious<sup>3</sup>; therefore, this area was subject to the RACT catch-up requirement and the November 15, 1992 deadline.<sup>4</sup>

The State of California submitted many revised RACT rules for incorporation into its SIP on July 13, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for SJVUAPCD Rule 4682, Polystyrene Foam, Polyethylene, and Polypropylene Manufacturing; and SJVUAPCD Rule 4684, Polyester Resin Operations. The SJVUAPCD adopted Rules 4682 and 4684 on June 16, 1994 and May 19, 1994, respectively. These submitted rules were found to be complete on July 22, 1994 pursuant to EPA's completeness criteria, which are set forth in 40 CFR Part 51 Appendix V,<sup>5</sup> and are being proposed for approval into the SIP.

The SJVUAPCD Rule 4682, Polystyrene Foam, Polyethylene, and Polypropylene Manufacturing, controls VOC emissions from the manufacturing and processing of polystyrene foam, polyethylene, and polypropylene and from the storage of VOC blowing agents; and SJVUAPCD Rule 4684, Polyester Resin Operations, controls emissions from polyester resin operations. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to sections 182(b)(2) (B) and (C). The following is EPA's evaluation and proposed action for these rules.

##### EPA Evaluation and Proposed Action

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

<sup>3</sup> The San Joaquin Valley Air Basin retained its designations 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>4</sup> California did not make the required SIP submittals by November 15, 1992. On January 15, 1993, the EPA made a finding of failure to make a submittal pursuant to section 179(a)(1), which started an 18-month sanction clock. The rules being acted on in this NPRM were submitted in response to the EPA finding of failure to submit.

<sup>5</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).

interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents.<sup>6</sup> 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 catch-up their RACT rules. See section 182(b)(2). The CTG applicable to SJVUAPCD Rule 4682 is entitled, "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins" (EPA-450/3-83-008). For some categories, such as polyester resin operations, EPA did not publish a CTG. In such cases, the district may determine what controls are required to satisfy the RACT requirement by reviewing the operations of facilities subject to the regulation and evaluating regulations for similar sources in other areas. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 6. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD Rule 4682, Polystyrene foam, Polyethylene, and Polypropylene Manufacturing, is a new rule adopted to:

- Provide emissions reduction methods such as (1) use of a blowing agent other than a VOC; or (2) use of trichlorofluoromethane (CFC-11) or dichlorodifluoromethane (CFC-12).
- Require recordkeeping for product use and add-on control equipment.
- Provide test methods to determine compliance.

SJVUAPCD Rule 4684, Polyester Resin Operations, is a new rule adopted to:

<sup>6</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policies that concerns 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).

- Control emissions from polyester resin operations through the following set of control options: (1) use of resin material with no more than 35% monomer by weight; (2) use of low pigmented gel coats with no more than 45% monomer by weight; (3) use of resin containing a vapor suppressant, such that weight loss from the VOC emissions does not exceed 60 grams per meter of exposed surface during resin polymerization; (4) use of a closed-mold system; and (5) use of an emission control system.

- Provide recordkeeping requirements.

- Provide test methods to determine compliance.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD Rule 4682, Polystyrene Foam, Polyethylene, and Polypropylene Manufacturing; and SJVUAPCD Rule 4684, Polyester Resin Operations are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state 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.

### Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Sections 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. sections 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 sections 110 and 301 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, 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. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: December 14, 1994.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 95-461 Filed 1-6-95; 8:45 am]

BILLING CODE 6560-50-P

### 40 CFR Part 60

[AD-FRL-5132-5]

#### Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Amendments to Method 24 for the Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule establishes procedures for the determination of volatile matter content, density, volume solids, and water content for ultraviolet radiation-cured coatings. Method 24 refers to the American Society for Testing and Materials (ASTM) procedures for the determination of volatile matter content, density, volume solids, weight solids, and water content of surface coatings. This ASTM method excluded ultraviolet radiation-cured coatings which was not EPA's intent. Therefore, EPA is revising Method 24 to apply to ultraviolet radiation-cured coatings.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

**DATES:** *Comments.* Comments must be received on or before March 7, 1995.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by January 30, 1995, a public hearing will be held on February 8, 1995 beginning at 10 a.m. Persons interested

in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact EPA by January 30, 1995.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicated if possible) to: Air Docket Section (LE-131), Attention: Docket Number A-94-37, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

*Public Hearing.* If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Candace Sorrell, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541-1064.

*Docket.* Docket Number A-94-37, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and Noon, and 1:30 and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Room M1500, First Floor, Waterside Mall, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Candace Sorrell at (919) 541-1064, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

### SUPPLEMENTARY INFORMATION:

#### I. The Rulemaking

Method 24 was intended to be used for measuring volatile organic compounds content of all coatings that are intended for either ambient or baking film foundation. When Method 24 was published in 1980 it referenced the American Society for Testing and Materials (ASTM) Method D 2369-81, which the Environmental Protection Agency believed would apply to all coatings. However, that method was not applicable to ultraviolet (UV) radiation-cured coatings and this amendment to Method 24 will incorporate ASTM Method D 5403-93, which does contain those procedures.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulation, nor does it change any emission standard. Rather, the rulemaking would simply amend an