

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 241-0239a; FRL-7005-1]

**Revisions to the California State Implementation Plan, Bay Area Air Quality Management District, El Dorado County 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) and El Dorado County Air Pollution Control District (EDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from polyester resin operations and the manufacture of foam products composed of polystyrene, polyethylene or polypropylene. 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 September 17, 2001 without further notice, unless EPA receives adverse comments by August 16, 2001. If we receive such comment, 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 94105-3901.

You can inspect copies of the submitted SIP 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 SIP revisions at the following locations:

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

El Dorado County Air Pollution Control District, 2830 Fairlane Ct., Bldg. C, Placerville, CA 95667.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1197.

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

**Table of Contents**

- I. The State's Submittal
  - A. What rules did the State submit?
  - B. Are there other versions of these rules?
  - C. What is the purpose of the submitted rules?
- II. EPA's Evaluation and Action
  - A. How is EPA evaluating the rules?
  - B. Do the rules meet the evaluation criteria?
  - C. Public comment and final action.
- III. Background information.
  - Why were these rules submitted?
- IV. Administrative Requirements

**I. The State's Submittal**

*A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
BAAQMD .....	8-52	Polystyrene, Polypropylene, and Polyethylene Foam Product Manufacturing Operations.	07/07/99	03/28/00
EDCAPCD .....	240	Polyester Resin Operations .....	02/15/00	07/26/00

On May 19, 2000 and October 4, 2000, these rule 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?*

These rules are new with no previous versions in the SIP.

*C. What Is the Purpose of the Submitted Rules?*

BAAQMD Rule 8-52 contains the following requirements:

- Emission limits per 100 lbs of raw materials processed
- 98% control device efficiency
- Monitoring and recordkeeping requirements
- Test methods necessary to determine compliance

EDCAPCD Rule 240 contains the following requirements:

- Monomer content for polyester resins

- Requirements for cleaning materials and closed containers
- Recordkeeping requirements
- Test methods for determining compliance

The TSDs have more information about these rules.

**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 Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The BAAQMD and EDCAPCD regulate ozone nonattainment areas (see 40 CFR part 81), so both rules must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. CARB's RACT/BARCT Guidance Document, "Polyester Resin Operations," January 1991.

4. Control Technique Guidelines (CTG) entitled, "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins" (EPA-450/3-83-008).

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

We believe these rules are consistent with the relevant policy and guidance

regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

**C. Public Comment and Final Action**

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it 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 August 16, 2001, 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 September 17, 2001. This will incorporate these rules into the federally enforceable SIP.

**III. Background Information**

*Why Were These Rules Submitted?*

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. 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. Administrative Requirements**

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. 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 (Public Law 104-4). This rule also does 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), nor will it 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), because it 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 Clean Air Act. This rule also is not subject to Executive Order 13045 (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 Clean Air Act. 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 Clean Air Act. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of

Unanticipated Takings” issued under the executive order. 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 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 September 17, 2001. 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.

Dated: June 6, 2001.

**Jane Diamond,**

*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)(277)(i)(C)(5) and (c)(280)(i)(B)(1) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(C) \* \* \*  
(277) \* \* \*  
(i) \* \* \*  
(C) \* \* \*

(5) Bay Area Air Quality Management District Rule 8–52, adopted on July 7, 1999.

\* \* \* \* \*

(280) \* \* \*  
(i) \* \* \*

(B) El Dorado County Air Pollution Control District

(1) Rule 240, adopted on February 15, 2000.

[FR Doc. 01–17700 Filed 7–16–01; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 80

[FRL–7011–2]

RIN 2060–Ai98

#### Regulation of Fuel and Fuel Additives: Reformulated Gasoline Adjustment

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

**ACTION:** Final rule.

**SUMMARY:** With today's action, EPA is adjusting the volatile organic compound (VOC) performance standard under

Phase II of the reformulated gasoline (RFG) program for ethanol RFG blends containing 3.5 weight percent oxygen (10 volume percent ethanol) sold in the Chicago and Milwaukee RFG areas. As discussed in the Notice of Proposed Rulemaking for this adjustment, the EPA is exercising its discretion under Section 211(k)(1) of the Clean Air Act which directs EPA, in promulgating emission reduction standards for RFG, to consider the cost of achieving such emission reductions as well as any nonair-quality and other air-quality related health and environmental impacts.

This adjustment reduces by 2.0 percentage points (equivalent to an increase in Reid Vapor Pressure (RVP) of approximately 0.3 pounds per square inch (psi)) the summertime VOC performance standard applicable to RFG blends containing 10 volume percent ethanol.

**DATES:** This rule is effective on July 17, 2001. For additional information on the effective date, see **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** For further information about this rule, contact Barry Garelick, Environmental Protection Specialist, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564–9028.

**SUPPLEMENTARY INFORMATION:** EPA believes that it is appropriate to make today's final rule effective immediately upon today's publication in the **Federal Register**. Because of the limited geographic scope of this rule, and because this rule generally provides for additional flexibility, it should not be problematic for regulated parties to immediately utilize and/or comply with the provision of this rule. Although this final rule includes some new requirements, these requirements are reasonable and necessary to provide the increased flexibility also included in this rule. EPA notes that the general requirement in 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), concerning publication or service of a substantive rule not less than 30 days prior to its effective date, does not apply here. CAA section 307(d)(1) provides that section 553 of the APA does not apply to promulgation or revision of any regulation pertaining to fuels or fuel additives under section 211 of the CAA. Even if section 553(d) of the APA were to apply, there is good cause under section 553(d)(3) to provide less than 30 days notice, for the reasons noted above.

The purpose of the RFG program is to improve air quality in specified areas of the country by requiring reductions in

emissions of ozone-forming volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>), and in emissions of toxic air pollutants, through the reformulation of gasoline, pursuant to 211(k) of the Clean Air Act (CAA or the Act), as amended. In the Act, Congress specified that RFG contain at least 2.0 weight percent oxygen. MTBE and ethanol are the two forms of chemical oxygen (or oxygenates) that gasoline producers most commonly use to add oxygen to gasoline. MTBE and ethanol have also been used in conventional gasoline, as octane enhancers, since the 1970s.

In September 1996, EPA awarded a contract to the National Research Council (NRC) to determine whether the reactivity (i.e., ozone-forming capacity) of VOCs can be taken into account in the RFG program without adversely impacting RFG's air quality benefits. In a report released in May 1999, the NRC found significant air quality benefits from RFG and recommended that "the contribution of carbon monoxide (CO) to ozone formation should be recognized in assessments of the effects of RFG." Ozone-Forming Potential of Reformulated Gasoline, National Academy Press, at p. 6 (1999). Mobile sources are a major source of CO emissions, contributing approximately 90 percent of the total CO for Chicago and Milwaukee.

In December 1998, EPA established the Blue Ribbon Panel on Oxygenates in Gasoline, a panel of independent experts, to examine MTBE's performance in gasoline, its presence in water, and alternatives to its use. (While EPA established the panel for reasons that were independent of ethanol issues and the NRC study on RFG, its relevance to this rulemaking is discussed further below.) Panel recommendations made to EPA in July 1999 include:

- Ensure no loss of current air quality benefits from RFG.
- Reduce the use of MTBE, and seek Congressional action to remove the RFG oxygen requirement in the Act.
- Strengthen the nation's water protection programs, including the Underground Storage Tank (UST), Safe Drinking Water, and private well protection programs.

On July 12, 2000, EPA proposed to adjust the VOC performance standard for RFG with 3.5 weight percent oxygen (equivalent to 10 volume percent ethanol) by 1.0 percentage point. As proposed, this adjustment to the VOC performance standard would apply to RFG marketed in all areas of the nation using RFG. As discussed in the Notice of Proposed Rulemaking for this