

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 24, 2004. 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 rule 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 July 23, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 7, 2004.

**Laura Yoshii,**

Deputy Regional Administrator, Region IX.  
[FR Doc. 04-11552 Filed 5-21-04; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 169-0440a; FRL-7665-2]

**Revision to the California State Implementation Plan, Bay Area Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and Ventura 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) Monterey Bay Unified Air Pollution Control District (MBUAPCD), and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). The revisions concern the emission of volatile organic compounds (VOCs) from episodic releases from relief devices, the emission of VOCs from the transfer of gasoline into storage containers at bulk terminals, and the storage and transfer of gasoline at dispensing facilities. 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 July 23, 2004 without further notice, unless EPA receives adverse comments by June 23, 2004. 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:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect a copy 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 a copy of the submitted rule revisions and TSDs at the following locations:

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.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltx.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4118, [petersen.alfred@epa.gov](mailto:petersen.alfred@epa.gov).

**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 rule we are approving with the date that it was amended or revised by the local air agency and submitted by the California Air Resources Board (CARB).

**TABLE 1.—SUBMITTED RULES**

Local agency	Rule #	Rule title	Amended or revised	Submitted
BAAQMD .....	8-28	Episodic Releases from Pressure Relief Devices at Petroleum Refineries and Chemical Plants.	03/18/98 Amended .....	03/28/00
MBUAPCD .....	418	Transfer of Gasoline into Stationary Storage Containers .....	04/16/03 Revised .....	08/11/03
VCAPCD .....	70	Storage and Transfer of Gasoline .....	11/11/03 Revised .....	01/15/04

On May 19, 2000, the submittal of BAAQMD Rule 8–28 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On October 10, 2003, the submittal of MBUAPCD Rule 418 was found to meet the completeness criteria. On March 1, 2004, the submittal of VCAPCD Rule 70 was found to meet the completeness criteria.

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

We approved a version of BAAQMD Rule 8–28 into the SIP on December 9, 1994 (59 FR 63721). We approved a version of MBUAPCD Rule 418 into the SIP on April 23, 2002 (67 FR 19682). We approved a version of VCAPCD Rule 70 into the SIP on October 29, 2002 (67 FR 65873).

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

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.

The purpose of revising BAAQMD Rule 8–28 relative to the SIP rule is to make the following changes:

- 8–28–114: To add a limited exemption from venting to a vapor recovery system for small refineries processing less than 20,000 barrels per day of crude.
- 8–28–200: To add nine new definitions to improve clarity.
- 8–28–302: To add a requirement that new sources meet BACT and to add a requirement to meet the Prevention Measures Procedures of 8–28–405.
- 8–28–303: To revise the five choices for compliance of existing sources down to two choices, which are to either vent to a vapor recovery system or to meet the Prevention Measures Procedures of 8–28–405.
- 8–28–304: To add the requirement to vent all devices, having a second Release Event, to a vapor recovery system.
- 8–28–401: To add additional reporting requirements for information regarding a Release Event.
- 8–28–401: To delete the requirement to maintain records of measurements for a period of two years.
- 8–28–405: To add requirements for Prevention Measures Procedures and a Process Hazards Analysis.
- 8–28–600: To revise test methods for the determination of Control Efficiency.

The purpose of revising MBUAPCD Rule 418 relative to the SIP rule is to make the following changes:

- 418.1.3.2: To require exemption from vapor recovery for delivery vessels for small facilities in operation before January 1, 1976, be requested annually by the owner instead of the owner or operator.

- 418.2.2: To add the definition of [California Air Resources Board] ARB-certified vapor recovery system.

- 418.3.1: To require that the vapor recovery system for transfer from a delivery vessel to a storage tank be ARB-certified instead of having a recovery of at least 95% of the gasoline vapors displaced.

- 418.5: To change the test method for the vapor recovery efficiency to ARB TP–202.1; the certification procedure for cargo tanks to ARB TP–204; and the static pressure and leak test procedures to ARB TP–204.1, 204.2, and 204.3.

The purpose of revising Rule 70 relative to the SIP is to remedy a deficiency in the limited approval/limited disapproval on October 29, 2002 (67 FR 65873). Offset sanctions would start on May 30, 2004, if the deficiency were not corrected. The deficiency cited and the remedy is as follows:

- [Sections H.1.c, H.2.b, H.3, and H.7.a: Reverification of the performance tests of the vapor recovery system originally required by the Executive Order should be performed more frequently. EPA recommends reverification of performance tests once every 6–12 months in order to fulfill RACT.] The reverification of performance tests frequencies have been increased. The static pressure test, dynamic pressure test, and liquid removal rate test for vapor recovery systems at all dispensing facilities exceeding 100,000 gallons per year of gasoline throughput are now required every 12 months. The air-to-liquid-volume-ratio test for vapor recovery systems at all dispensing facilities using vacuum assist are now required every 12 months. Test frequencies are less at smaller facilities.

Other revisions to improve Rule 70 are as follows:

- An obsolete compliance date was removed.
- The list of Phase II (storage tank to vehicle) vapor recovery system defects was removed from the rule and instead referenced in California Code of Regulations, title 17, section 94006, adopted November 12, 2002.
- The references to specific CARB test methods were updated.
- Any test required by the CARB Executive Order, but not by this rule, shall be performed at the frequency required by the CARB Executive Order.

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

The BAAQMD regulates an area designated ozone nonattainment in accordance with subpart 1, section 172(c)(1) of the CAA. This section requires that the BAAQMD in general adopt RACM that, at a minimum, includes RACT. There are no specific mandatory RACM/RACT measures for VOC that must be adopted in subpart 1. Therefore, we are evaluating that the control measures and/or control technology employed are reasonably available.

The MBUAPCD regulates an ozone maintenance attainment area (see 40 CFR part 81). The maintenance attainment plan relies on MBUAPCD Rule 418 for attainment. See *Redesignation Request and Request for Exemption from NO<sub>x</sub> RACT Rule Requirements for the Monterey Bay Region* (March, 1994). Therefore, MBUAPCD Rule 418 must fulfill the requirements of RACT and the special requirements for gasoline recovery.

The VCAPCD regulates an area designated ozone nonattainment. Therefore, VCAPCD Rule 70 must fulfill the requirements of RACT and the special requirements for gasoline recovery.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988). (The Bluebook)
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region IX (August 21, 2001). (The Little Bluebook)
- *Gasoline Vapor Recovery Guidelines*, EPA Region IX (April 24, 2000).
- *Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals*, EPA–450–2–77–026 (October 1977).
- *Control of VOC Leaks From Gasoline Tank Trucks and Vapor Collection Systems*, EPA–50–2–78–051 (December 1978).

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

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, special gasoline requirements, and fulfilling RACM/RACT in general. The TSD has more information on our evaluation.

### C. EPA Recommendation to Further Improve a Rule

The TSD describes an additional revision to BAAQMD Rule 8–28 that does not affect EPA's current action but is recommended for the next time the local agency modifies the rule.

### D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving 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 June 23, 2004, 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 July 23, 2004. This will incorporate Rule BAAQMD 8–28, MBUAPCD Rule 418, and VCAPCD Rule 70 into the federally-enforceable SIP. There are no sanction or FIP clocks associated with our previous action on BAAQMD 8–28 or MBUAPCD Rule 418. However, offset sanctions for VCAPCD Rule 70 would start on May 31, 2004, to be followed six months later by highway sanctions, if the deficiency were not remedied.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this 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. 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 Clean Air Act. 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 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. 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 July 23, 2004. 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.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 7, 2004.

**Laura Yoshii,**

*Deputy 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)(8),

(320)(i)(A)(3), and (328) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(277) \* \* \*

(i) \* \* \*

(C) \* \* \*

(8) Rule 8–28, adopted on July 16, 1980 and amended on March 18, 1998.

\* \* \* \* \*

(320) \* \* \*

(i) \* \* \*

(A) \* \* \*

(3) Rule 418, adopted on September 1, 1974 and revised on April 16, 2003.

\* \* \* \* \*

(328) Amended regulations for the following APCDs were submitted on January 15, 2004, by the Governor's Designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District

(1) Rule 70, adopted on June 25, 1974 and revised on November 11, 2003.

\* \* \* \* \*

[FR Doc. 04–11553 Filed 5–21–04; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP–2004–0136; FRL–7358–7]

**Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

**DATES:** This regulation is effective May 24, 2004. Objections and requests for hearings must be received on or before July 23, 2004.

**ADDRESSES:** To submit a written objection or hearing request follow the

detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID number OPP–2004–0136. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Contact person	Pesticide/CFR cite
Barbara Madden, <a href="mailto:madden.barbara@epa.gov">madden.barbara@epa.gov</a> (703) 305–6463	Carfentrazone-ethyl; 180.515 Coumaphos; 180.189 Dimethenamid; 180.464
Linda Arrington, <a href="mailto:arrington.linda@epa.gov">arrington.linda@epa.gov</a> (703) 305–6249	Diflubenzuron; 180.377
Stacey Groce, <a href="mailto:groce.stacey@epa.gov">groce.stacey@epa.gov</a> (703) 305–2505	Mancozeb; 180.176 Myclobutanil; 180.443
Andrew Ertman, <a href="mailto:ertman.andrew@epa.gov">ertman.andrew@epa.gov</a> (703) 308–9367	S-metolachlor; 180.368 Sulfentrazone; 180.498
Andrea Conrath, <a href="mailto:conrath.andrea@epa.gov">conrath.andrea@epa.gov</a> (703) 308–9356	Bifenthrin; 180.442 Fenbuconazole; 180.480 Indoxacarb; 180.564 Pyriproxyfen; 180.510 Thiabendazole; 180.242 Thiophanate Methyl; 180.371

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.