

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The removal of the suspension notation from 30 CFR 917.17(c) acknowledges the transfer of funds by Kentucky into the Bond Pool Fund. The July 15, 2004, removal of the suspension should increase bonding options for coal operators and facilitate the approval of surface coal mining operations within the State.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously discussed, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

For the reasons previously discussed, this rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 11, 2005.

Brent Wahlquist,
Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 917.17 [Amended]

■ 2. In § 917.17, paragraph (c) is amended by removing the second sentence.

[FR Doc. 05-4386 Filed 3-7-05; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 311-0471a; FRL-7878-3]

Revisions to the California State Implementation Plan, Kern 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 Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM-10) from wood combustion and the rescision of a rule exempting wet plumes from opacity standards. We are approving the incorporation of a local rule and rescision of a rule that administer regulations and regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on May 9, 2005, without further notice, unless EPA receives adverse comments by April 7, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Mail or e-mail 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, or submit comments at <http://www.regulations.gov>.

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSD 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.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301.

A copy of the rules 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 rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4118 or 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 rules we are approving with the date that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Action	Submitted
KCAPCD	403	General Limitations on the Discharge of Air Contaminants	11/29/93 Rescinded	03/29/94

TABLE 1.—SUBMITTED RULES—Continued

Local agency	Rule #	Rule title	Action	Submitted
KCAPCD	416.1	Wood Burning Heaters and Wood Burning Fireplaces	07/08/04 Adopted	09/23/04

On June 3, 1994, the recision submittal of KCAPCD Rule 403 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On October 18, 2004, the submittal of KCAPCD Rule 416.1 was found to meet the completeness criteria.

B. Are There Other Versions of These Rules?

Rule 403 was originally submitted on June 30, 1972 and approved on September 22, 1972 (37 FR 19812). There is no version of Rule 416.1 in the SIP.

C. What Are the Purposes of the Submitted Rule Revisions?

PM-10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM-10 emissions.

The purpose of the recision of Rule 403 is as follows:

- To simplify the SIP by incorporating the exemption for wet plumes into KCAPCD Rule 401, Visible Emissions.

The purpose of Rule 416.1 is as follows:

- To minimize the emissions of PM-10, organic gases, and carbon monoxide from wood burning fireplaces in new housing subdivisions and wood burning heaters throughout East Kern County by (a) prohibiting the sale or transfer of a new or used wood burning heater unless it is EPA Phase II-certified or rendered permanently inoperable or is pellet-fueled and by (b) prohibiting installation of new wood burning fireplaces in a residential subdivision with more than 10 homes.

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 measures (RACM), including reasonably available control technology (RACT) in moderate PM-10 nonattainment areas (see section 189(a)), and must not relax existing requirements (see sections 110(l) and 193). A portion of KCAPCD was designated the Indian Wells Valley moderate PM-10 nonattainment area. However, this area was redesignated PM-10 attainment on May 7, 2003 (68

FR 24368). The redesignation action did not rely on Rule 416.1 to achieve attainment. Therefore, we conclude that submitted Rule 416.1 need not fulfill the requirements of RACM/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.
- *PM-10 Guideline Document* (EPA-452/R-93-008).

B. Do the Rules Meet the Evaluation Criteria?

Rule 416.1 improves the SIP by regulating a source category not previously regulated. We believe that Rule 416.1 is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations and should be approved. The recision of Rule 403 does not relax the SIP and should be approved.

The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving Rule 416.1 and the recision of Rule 403, because we believe these actions fulfill all relevant requirements. We do not think anyone will object to this approval, 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 actions. If we receive adverse comments by April 7, 2005, 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 9, 2005. This will incorporate Rule 416.1 into and rescind Rule 403 from 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. 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 (Public Law 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 May 9, 2005. 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 8, 2005

Karen Schwinn,

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)(6)(vi)(E) and (c)(334) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(6) * * *

(vi) * * *

(E) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement Rule 403 (Southeast Desert).

* * * * *

(334) New and amended regulations for the following APCDs were submitted on September 23, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

(1) Rule 416.1, adopted on July 8, 2004.

[FR Doc. 05-4340 Filed 3-7-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R08-OAR-2005-SD-0001; FRL-7878-6]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by the State of South Dakota that are incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by South Dakota and approved by EPA.

DATES: *Effective Date:* This action is effective March 8, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. R08-OAR-2005-SD-0001. All documents in the docket are listed in the Regional Materials in EDOCKET index at <http://docket.epa.gov/rmepub/index.jsp>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (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 Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

SIP materials which are incorporated by reference into 40 CFR part 52 are also available for inspection at the following locations: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-108 (Mail Code 6102T), 1301 Constitution Ave., NW, Washington, DC 20460 or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312-6437, ostrand.laurie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we" or "our" is used it means the EPA.

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