

Where:

ACA Accuracy = The ACA accuracy at each audit point, in percent,

R_{CEM} = Your PM CEMS response to the reference standard, and
R_V = The reference standard value.

$$\text{ACA Accuracy} = \frac{|C_{\text{CEM}} - C_{\text{RV}}|}{C_s} \times 100\% \quad \text{Eq. 2-1b}$$

Where:

ACA Accuracy = The ACA accuracy at each audit point, in percent,

C_{CEM} = The PM concentration that corresponds to your PM CEMS response to the reference standard, as calculated using the correlation equation for your PM CEMS,C_{RV} = The PM concentration that corresponds to the reference standard value in units consistent with C_{CEM}, andC_s = The PM concentration that corresponds to the applicable emission limit in units consistent with C_{CEM}.

* * * * *

Part 63—[Amended]

■ 7. The authority citation for Part 63 continues to read as follows:

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

■ 8. In Method 303 of Appendix A, add a sentence to the end of Section 1.1 to read as follows:

Appendix A to Part 63—Test Methods

Method 303—Determination of Visible Emissions From By-Product Coke Oven Batteries

1.1 Applicability. * * * In order for the test method results to be indicative of plant performance, the time of day of the run should vary.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-R09-OAR-2008-0759; FRL-8783-7]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of California; Amador County Air Pollution Control District, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the current delegation status of national emission

standards for hazardous air pollutants in California. Amador County Air Pollution Control District and San Diego County Air Pollution Control District requested delegation of these federal standards as they apply to non-major sources. Their delegation requests were approved by letter on September 4, 2008. The purpose of this action is to update the listing in the Code of Federal Regulations. EPA Region IX is also waiving the need for duplicate reporting after a California district is delegated these federal standards applicable to non-major sources.

DATES: This rule is effective on May 26, 2009 without further notice, unless EPA receives relevant adverse comments by April 24, 2009. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2008-0759, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.
2. *E-mail:* steckel.andrew@epa.gov.
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may

not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947-4124, wang.mae@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” refer to EPA.

Table of Contents

- I. Background
 - A. Delegation of NESHAP
 - B. California Delegations
 - C. Area Source Delegation Requests
- II. EPA Action
 - A. Area Source Delegation Requests
 - B. Waiver of Duplicate Reporting
- III. Statutory and Executive Order Reviews

I. Background**A. Delegation of NESHAP**

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to State or local air pollution control agencies the authority to implement and enforce the standards set out in Title 40 of the Code of Federal Regulations (CFR), Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP). On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E (hereinafter referred to as “Subpart E”), establishing procedures for EPA’s approval of State rules or programs under CAA 112(l) (*see* 58 FR 62262). The procedures of Subpart E were later amended on September 14, 2000 (*see* 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and Subpart E. To

streamline the approval process for future applications, a State or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the State or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program. On July 6, 1995, the California Air Resources Board (CARB) submitted a demonstration that California has adequate authorities and resources to implement and enforce CAA section 112 programs and rules. This demonstration was approved on May 21, 1996 (61 FR 25397).

B. California Delegations

While each local air pollution control agency in California (district) has an approved program for receiving delegation of any CAA section 112 standards as promulgated, most California districts currently have delegation only for standards that apply to major sources. As part of EPA's approval of each district's Title V operating permits program, districts received delegation of unchanged federal section 112 standards for Title V sources. This delegation did not extend to sources not covered by the California Title V program submittals. Therefore, California needed to make a separate voluntary request for delegation of any section 112 standards that apply to sources not covered by district Title V programs (e.g., area sources that are not subject to Title V).

C. Area Source Delegation Requests

On October 6, 2003, CARB submitted on behalf of nine California districts a request for delegation of all federal section 112 standards that apply to area sources, with the exception of the dry cleaning and chromium electroplating standards for which State or local rules have already been approved (*see* 61 FR 25397 and 64 FR 12762). This request was approved on December 19, 2003 (*see* 68 FR 70726). In that approval, it was explained that future requests by other districts could be approved by letter, followed by a **Federal Register** notice to codify the delegations into the CFR.

The Amador County Air Pollution Control District and San Diego County Air Pollution Control District later asked CARB to make a delegation request on

their behalf for CAA section 112 area source standards. The dates of each district's letter to CARB are listed in the table below:

Local agency	Date of letter to CARB
Amador County APCD	October 6, 2003.
San Diego County APCD	March 25, 2008.

On June 17, 2008, CARB submitted the request on behalf of these two districts. On September 4, 2008, EPA Region IX approved this request by letter, granting each district the authority to implement and enforce existing area source standards unchanged as promulgated by EPA.

II. EPA Action

A. Area Source Delegation Requests

Today's action serves to notify the public that, with the exception of the dry cleaning and chromium electroplating standards, EPA has granted delegation of unchanged federal section 112 area source standards to the following districts in California: Amador County Air Pollution Control District and San Diego County Air Pollution Control District. These districts have authority to implement and enforce existing area source standards unchanged as promulgated by EPA. Each of these districts will also receive delegation of any future area source standards or revisions 90 days after promulgation of these standards or revisions, unless the district chooses to decline delegation of a particular future standard by notifying the EPA Region IX office in writing. If no such notification is received, the delegation will go into effect 90 days after promulgation of the standard or revision, without any additional action from the district or EPA.

B. Waiver of Duplicate Reporting

After a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency becomes the primary point of contact with respect to that NESHAP. Pursuant to 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA Region IX waives the requirement that notifications or reports for delegated area source standards be submitted to EPA as well as the delegated California district. Therefore, in California, after a district receives delegation of an area source NESHAP, the owner or operator of an affected source in that district need only submit notifications or reports to the district. Duplicate copies of those notifications or reports are not required to be submitted to the EPA Region IX

office. At this point, this waiver only applies to the specific area source standards delegated to the following districts in California: Amador County Air Pollution Control District, Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District (*see* 40 CFR 63.99(a)(5)(i)(B)). In the future, this waiver will automatically apply each time EPA Region IX delegates an area source standard to a California district. As mentioned previously, these delegations will be granted by letter, followed by a **Federal Register** notice to codify the delegations into the CFR. EPA reserves the right to re-evaluate the appropriateness of such a broad waiver in the event of programmatic changes or on a source category basis. In addition, EPA retains the authority to request information or copies of notifications or reports via CAA section 114.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a delegation request that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7412(l); 40 CFR 63.91(b). Thus, in reviewing state delegation submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely updates the list of approved delegations in the CFR and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the delegation submission is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 26, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: March 9, 2009.

Deborah Jordan,

Director, Air Division, Region IX.

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for Part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by revising paragraph (a)(5)(i)(B) to read as follows:

§ 63.99 Delegated Federal authorities.

- (a) * * *
(5) * * *
(i) * * *

(B) *California area sources.* Except as described in paragraph (a)(5)(ii) of this section, the local agencies listed below also have delegation for national emission standards promulgated in this part as they apply to area sources:

- (1) Amador County Air Pollution Control District.
- (2) Antelope Valley Air Quality Management District.
- (3) Butte County Air Quality Management District.
- (4) Kern County Air Pollution Control District.
- (5) Mendocino County Air Quality Management District.
- (6) Mojave Desert Air Quality Management District.
- (7) Monterey Bay Unified Air Pollution Control District.
- (8) San Diego County Air Pollution Control District.
- (9) San Joaquin Valley Unified Air Pollution Control District, only for standards promulgated in this part and incorporated by reference in district Rule 4002, amended on May 20, 2004.
- (10) San Luis Obispo County Air Pollution Control District.
- (11) Ventura County Air Pollution Control District.

(12) Yolo-Solano Air Quality Management District.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0666; FRL-8399-8]

Castor Oil, Ethoxylated, Oleate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of castor oil, ethoxylated, oleate, minimum number average molecular weight (in amu) 2,000, (CAS No. 220037-02-05); when used as an inert ingredient in a pesticide chemical formulation. Goldschmidt Chemical Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of castor oil, ethoxylated, oleate on food or feed commodities.

DATES: This regulation is effective March 25, 2009. Objections and requests for hearings must be received on or before May 26, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0666. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m.