

EPA-APPROVED NON-REGULATORY OR QUASI-REGULATORY MATERIAL

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
8-Hour Ozone Maintenance Plan for the York-Adams, PA Area.	York-Adams Counties Area ...	6/14/07	1/14/08, 73 FR 2163.	
		5/23/08	8/13/09 [Insert page number where the document begins].	

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 [FR Doc. E9-18864 Filed 8-12-09; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2008-0566; FRL-8939-2]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District, Kern County Air Pollution Control District, Mohave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the following actions: A disapproval of revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) portion of the California State Implementation Plan (SIP); a limited approval and limited disapproval of revisions to the Kern County Air

Pollution Control District (KCAPCD) SIP; and, a limited approval and limited disapproval of revisions to the Mohave Desert Air Quality Management District (MDAQMD) SIP. These revisions concern particulate matter (PM) emissions from fugitive dust sources. This action was proposed in the **Federal Register** on November 18, 2008. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action directs California to correct rule deficiencies in GBUAPCD Rule 401; and, this action simultaneously approves KCAPCD Rule 402 and MDAQMD Rule 403.1 and directs California to correct the deficiencies within these rules.

DATES: *Effective Date:* This rule is effective on September 14, 2009.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2008-0566 for this action. The index to the docket is available electronically at <http://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: Jerry Wamsley, EPA Region IX, (415) 947-4111, wamsley.jerry@epa.gov.

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

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I. Proposed Action

On November 18, 2008 (73 FR 68369), EPA proposed to disapprove GBUAPCD Rule 401. In this same action, EPA proposed a limited approval and limited disapproval of KCAPCD Rule 402 and MDAQMD Rule 403.1. Table 1 lists the rules that California submitted for incorporation within the SIP.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
GBUAPCD	401	Fugitive Dust	12/04/06	05/08/07
KCAPCD	402	Fugitive Dust	11/03/04	01/13/05
MDAQMD	403.1	Fugitive Dust Control	11/25/96	03/03/97

We proposed to disapprove GBUAPCD Rule 401 because some provisions do not satisfy the requirements of section 110 and part D of the Act. These provisions are discussed below.

1. The rule lacks a 20% opacity limit. GBUAPCD should either incorporate or reference such a 20% opacity limit.

2. The rule lacks a clear description of required control measures for meeting the rule’s opacity and property line PM emission limits. GBUAPCD should also

remove the “reasonable precautions” language.

3. GBUAPCD should either provide a precise wind speed exemption from the rule’s emission standards, or delete the language concerning “normal wind conditions”.

4. GBUAPCD should remove director’s discretionary language in Section D.1.

5. As specified by the PM-10 plan, GBUAPCD should define required BACM provisions beyond those already

adopted to reduce Owens dry lakebed dust emissions, and specify an enforceable implementation schedule.

We proposed a limited approval of KCAPCD Rule 402 and MDAPCD Rule 403.1 because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act.

Regarding KCAPCD Rule 402, the provisions listed below conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. The definitions for “open storage piles” and “prevailing wind direction” contain instances of APCO discretion that should be delimited by specific criteria for adjudicating the issues within these definitions.

2. The rule provides an overly broad exemption for agricultural operations.

3. The rule provides an overly broad exemption for actions required by Federal or State endangered species legislation, or the Surface Mining and Reclamation Act.

4. The rule provides an overly broad exemption for public parks and recreation areas such as county, State, and national parks, recreation areas, forests, and monuments.

5. The rule provides exemptions for contractors provided reasonably available control measures were implemented prior to a contract termination date and a final grading inspection. However, no records are required to demonstrate implementation of reasonably available control measures.

6. Monitoring provisions are set aside for large operations for a calendar quarter. This exemption from monitoring is not justified or explained.

7. The rule states that no visible emissions are allowed beyond the property line of an active operation; however, the rule does not specify an opacity limit and the test methods for determining compliance for unpaved roads which are exempted from the property line limit.

8. The suggested reasonably available control measures for fugitive dust listed in Table 1 are not specific and lack standards for determining compliance and allied test methods.

9. Large operations may set aside applying control measures if the APCO concurs that “special technical, *e.g.* non-economic circumstances” prevent control measure implementation. This exemption is vague and allows for inappropriate Director’s Discretion. KCAPCD should define the circumstances that may prevent control measure implementation and the criteria the APCO will use to decide these issues.

10. The rule should specify that all records demonstrating compliance should be maintained for two years and made available to the Control Officer upon request.

Regarding Rule MDAQMD Rule 403.1, the provisions listed below conflict with section 110 and part D of the Act and

prevent full approval of the SIP revision.

1. The following terms should be defined: Brackish water, paved roads used for industrial activity, Dust Control Plan, industrial fugitive dust sources, industrial fugitive dust sources, and exterior transfer lines.

2. Sections C.2.(a)(i), C.2.(b)(i), C.2(d)(i), C.4(d)(i) state that weekly brackish water treatments or biweekly sweeping and collection are presumed to be sufficient for meeting the required Road Surface Silt Loading standard. However, compliance with the rule’s silt loading standard needs to be confirmed by observations using the appropriate test method.

3. At Section C.4.(b), there is a requirement to permanently eliminate 2,750 square feet of bulk material storage piles that were exposed during 1990; however, it is unclear how this provision can be enforced effectively given the lack of specificity within the rule concerning these storage piles.

4. Section C.5 does not provide a date certain by which the BLM and the District jointly prepare a dust control plan that reduces BLM PM-10 emissions by at least 20 percent relative to 1990 levels.

5. The exemption for agricultural operations at Section D(1)(a) should be removed.

6. In Section F.1(c), the rule should state explicitly what the freeboard requirements are instead of incorporating the California Vehicle Code by reference. Also, these requirements should be incorporated within the appropriate paragraph in Section C.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of these rules.

II. Public Comments and EPA Responses

EPA’s proposed action provided a 30-day public comment period. During this period, we received no comments on our proposed actions on these rules. This comment period closed December 18, 2008.

III. EPA Action

No comments were submitted sufficient to change our assessment of these rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a disapproval of GBUAPCD Rule 401; this action will not incorporate GBUAPCD Rule 401 into the SIP. Also, as authorized in sections 110(k)(3) and 301(a) of the Act, we are finalizing a limited approval and a

limited disapproval of KCAPCD Rule 402 and MDAQMD Rule 403.1; these rules will be incorporated within the SIP, including those provisions identified as deficient.

In finalizing a disapproval of GBUAPCD Rule 401, our action will not incorporate submitted GBUAPCD Rule 401 into the SIP, instead, it will retain 1977 adopted rule within the SIP. We will not impose sanctions, pursuant to section 179 of the Act, because Rule 401 is not a required CAA submittal. Note that the submitted rule has been adopted by the GBUAPCD, and EPA’s final disapproval does not prevent the local agency from enforcing it.

With KCAPCD Rule 402, we will not impose sanctions under section 179 of the Act, because Rule 402 is not a required submittal under the CAA and is not an essential Reasonably Available Control Measure (RACM) under the Indian Wells Maintenance Plan. The submitted rule has been adopted by the KCAPCD, and EPA’s final limited disapproval does not prevent the local agency from enforcing it.

Regarding Rule 403.1, we will not impose sanctions under section 179 of the Act, because Rule 403.1 is not an essential RACM given the ongoing clean data observed in the Trona subregion since 1992. The submitted rule has been adopted by the MDAQMD, and EPA’s final limited disapproval does not prevent the local agency from enforcing it.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials

in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that 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.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

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). This rule will be effective *September 14, 2009*.

K. Petitions for Judicial Review

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 *October 13, 2009*. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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: May 12, 2009.

Laura Yoshii,

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) (244)(i)(C)(2), (335)(i)(E), and (350)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *
(244) * * *
(i) * * *
(C) * * *

(2) Rule 403.1, "Fugitive Dust Control for the Searles Valley Planning Area", adopted on June 22, 1994 and amended on November 25, 1996.

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(335) * * *
(i) * * *

(E) Kern County Air Pollution Control District

(1) Rule 402, "Fugitive Dust", adopted on November 29, 1993 and amended on November 3, 2004.

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(350) * * *

(i) * * *

(A) * * *

(2) Rule 401, "Fugitive Dust", adopted on September 5, 1974 and amended on December 04, 2006.

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[FR Doc. E9-19338 Filed 8-12-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[EPA-HQ-OPP-2008-0805; FRL-8426-9]

Spinetoram; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the tolerances for the combined residues of spinetoram in or on almond, hulls; nut, tree, group 14; and pistachio and establishes tolerances for date; pomegranate; pineapple; pineapple, processed residue; spice, subgroup 19B, except black pepper; and hop, dried cones. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 13, 2009. Objections and requests for hearings must be received on or before October 13, 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-2008-0805. 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. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Samantha Hulkower, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-0683; e-mail address: hulkower.samantha@epa.gov.

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 those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide 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**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at <http://www.gpoaccess.gov/ecfr>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/oppts>.