

EPA—APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date	Explanations
Air Quality surveillance plan ..... Protection Visibility in Class I Areas .....	Commonwealth of Kentucky ..... Mammoth Cave National Park (Class I area).	11/15/79 08/31/97	11/16/81, 46 FR 56198. 07/12/88, 53 FR 26253.	
Small Business Assistance Program .....	Commonwealth of Kentucky .....	07/15/93	06/19/95, 60 FR 31915.	
Lexington Maintenance Plan .....	Fayette County, Scott County ...	01/15/93	09/11/95, 60 FR 47094.	
Ashland-Huntington Maintenance Plan .....	Boyd County, Greenup County ..	05/24/95	06/29/95, 60 FR 33752.	
Maintenance Plan for Owensboro & Edmonson County Area.	Daviess County, Hancock County, Edmonson County.	04/14/98	09/03/98, 63 FR 46898.	
Northern Kentucky 15% Plan & I/M .....	Boone, Campbell and Kenton Counties.	09/11/98	12/08/98, 63 FR 67591.	
Negative Declarations for the nonattainment por- tions of Bullitt and Oldham Counties in Louis- ville 1-hour moderate ozone nonattainment area for CTG rules for aerospace, SOCM, I, shipbuilding, and wood furniture manufacturing.	Jefferson County, Bullitt County, Oldham County.	12/14/99	10/23/01, 66 FR 53665.	
Negative Declarations submitted by the Air Pollu- tion Control District of Jefferson County for the Louisville 1-hour moderate ozone nonattain- ment area for CTG rules for aerospace, ship- building, and wood furniture manufacturing.	Jefferson County, Bullitt County, Oldham County.	02/26/01	10/23/01, 66 FR 53665.	
Louisville Ozone Maintenance Plan .....	Jefferson County and portions of Bullitt and Oldham Counties.	07/09/01	10/23/01, 66 FR and 53685.	
Maintenance Plan for Paducah Area .....	Marshall County and a portion of Livingston County.	06/14/01	08/20/01, 66 FR 43488.	
Northern Kentucky Maintenance Plan revisions ...	Boone, Campbell and Kenton Counties.	05/02/03	05/30/03, 68 FR 32384.	

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 289-0418a; FRL-7600-9]

**Revision to the California State Implementation Plan, Monterey Bay Unified 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 Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM-10) from open outdoor burning. We are approving a local rule and removing rescinded local rules that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on March 12, 2004 without further notice, unless EPA receives adverse comments by February 11, 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 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 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.

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

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.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 rules and dates that MBUAPCD adopted or rescinded the local rules and when they were submitted to EPA by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted or rescinded	Submitted
MBUAPCD .....	438	Open Outdoor Fires .....	04/16/03, Adopted .....	08/11/03
MBUAPCD .....	407	Open Outdoor Fires .....	04/16/03, Rescinded .....	08/11/03
MBUAPCD .....	409	Burning of Agricultural Wastes .....	04/16/03, Rescinded .....	08/11/03
MBUAPCD .....	410	Range Improvement Burning .....	04/16/03, Rescinded .....	08/11/03
MBUAPCD .....	411	Forest Management Burning .....	04/16/03, Rescinded .....	08/11/03
MBUAPCD .....	422	Burning of Wood Wastes from Developments ..	04/16/03, Rescinded .....	08/11/03
MBUAPCD .....	432	Wildland Vegetation Management Burning .....	04/16/03, Rescinded .....	08/11/03

On October 10, 2003, this submittal was 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?*

We approved Rule 407, which was submitted on October 27, 1983, into the SIP on May 3, 1984 (49 FR 18830). We approved Rules 409, 410, 411, and 422, which were submitted on February 6, 1985, into the SIP on July 13, 1987 (52 FR 26148). Rule 432 was never approved into the SIP and therefore EPA does not need to take any action to remove it from the SIP.

#### *C. What Is the Purpose of the Submitted SIP Revision?*

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 submitted SIP revision is described below:

- To incorporate the requirements of the State “Air Toxic Control Measure to Reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning.”

- To incorporate the California Code of Regulations, title 17, requirements for prescribed burning and the District’s adopted Smoke Management Program.

- To reorganize the District’s existing burn rules into one rule for clarity and ease of understanding.

The specific amendments that MBUAPCD made after rescinding several rules and combining their content into Rule 438 are as follows:

- Removed the exemption for forest management burning, range improvement, and wildland vegetation management burning on no-burn days.

- Added an exemption for test burns on no-burn days under specific conditions.

- Added a requirement that prescribed burn projects be registered with the District annually or seasonally.

- Added a requirement for submission by the burner of a Smoke Management Plan for prescribed burn projects.

- Added a requirement that prescribed burns may only be conducted after the burner has received authorization from the District within 24 hours of the ignition.

- Added a restriction that no prescribed burning is allowed on days when poor air quality has been predicted.

- Added a requirement for direct public notification of sensitive downwind receptors for prescribed burn projects.

- Added a restriction that the total emissions from all prescribed burn projects on each day in the air basin remain within the adopted Air Quality Maintenance Plan VOC and NOX emission inventories during the ozone season (May through October).

- Added a provision that the Air Pollution Control Officer may ease the restriction on total emissions under certain limited conditions.

- Clarified which is the “designated agency” to issue agricultural waste burning permits.

The TSD has more information about these rules.

## **II. EPA’s Evaluation and Action**

### *A. How Is EPA Evaluating the SIP Revision?*

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Best Available Control Measures (BACM) including, Best Available Control Technology (BACT), for significant source categories or major sources in serious PM-10 nonattainment areas (see section 189(b)), must require Reasonably Available Control Measures (RACM) including, Reasonably Available Control Technology (RACT), for significant source categories or major sources in moderate PM-10 nonattainment areas (see section 189(a)), and must not relax existing requirements (see sections 110(l) and 193). MBUAPCD is a PM-10 attainment area and need not fulfill the requirements of BACM/BACT or 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.

- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998, 42011 (August 16, 1994).

### *B. Does the SIP Revision Meet the Evaluation Criteria?*

We believe that Rule 438 is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. 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 the submitted SIP revision because we believe it fulfills 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 SIP revision. If we receive adverse comments by February 11, 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 March 12, 2004. This will incorporate MBUAPCD Rule 438 into the federally-enforceable SIP and remove MBUAPCD Rules 407, 409, 410, 411, and 422 from the 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 March 12, 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 2, 2003.

#### Wayne Nastri,

*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)(148)(iii)(B), (159)(iii)(F), and (320) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(148) \* \* \*

(iii) \* \* \*

(B) Previously approved on May 3, 1984 in (c)(148)(iii)(A) of this section and now deleted without replacement Rule 407.

\* \* \* \* \*

(159) \* \* \*

(iii) \* \* \*

(F) Previously approved on July 13, 1987 in (c)(159)(iii)(A) of this section and now deleted without replacement Rules 409, 410, 411, and 422.

\* \* \* \* \*

(320) New and amended regulations for the following APCDs were submitted on August 11, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified Air Pollution Control District.

(1) Rule 438, adopted on April 16, 2003.

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