

environmental impact statement is required. A preliminary environmental analysis check list supporting this determination is available in the docket where indicated under **ADDRESSES**. This rule involves establishing a safety zone around a fireworks display. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–XXXX to read as follows:

#### 165.T05–XXXX Safety Zone; Wicomico Community Fireworks, Great Wicomico River, Mila, VA.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Great Wicomico River located within a 420 foot radius of the fireworks display approximately ½ mile down river of Rouge Point Light, at approximate position 37°50'31" N/076°19'42" W (NAD 1983) in the vicinity of Mila, VA.

(b) *Definitions.* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Effective Period:* This regulation will be in effect on July 3, 2010, with a rain date of July 4, 2010 from 9 p.m. until 10 p.m.

Dated: February 2, 2010.

**M.S. Ogle,**

*Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.*

[FR Doc. 2010–3474 Filed 2–22–10; 8:45 am]

**BILLING CODE 9110–04–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R09–OAR–2010–0120; FRL–9116–3]

#### Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern coarse particulate matter (PM<sub>10</sub>) emissions from sources of fugitive dust such as construction sites, unpaved roads, and disturbed soils in open and agricultural areas. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by March 25, 2010.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2010–0120, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto: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 <http://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 <http://www.regulations.gov> or e-mail. <http://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.

*Docket:* The index to the docket for this action 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:** Andrew Steckel, EPA Region IX, (415) 947–4115, [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

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

#### Table of Contents

- I. The State’s Submittal
  - A. What Rules Did the State Submit?
  - B. Are There Other Versions of These Rules?
  - C. What Is the Purpose of the Submitted Rules?
- II. EPA’s Evaluation
  - A. How Is EPA Evaluating the Rules?
  - B. Do the Rules Meet the Evaluation Criteria?
  - C. What Are the Rules’ Deficiencies?
  - D. EPA Recommendations To Further Improve the Rules
- III. Proposed Action and Public Comment
- IV. Statutory and Executive Order Reviews

#### I. The State’s Submittal

##### A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency, ICAPCD, and submitted by the California Air Resources Board (ARB).

The seven rules listed below constitute ICAPCD's Regulation VIII—Fugitive Dust Rules.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD .....	800	General Requirements for Control of Fine Particulate Matter .....	11/08/05	06/16/06
	801	Construction & Earthmoving Activities .....	11/08/05	06/16/06
	802	Bulk Materials .....	11/08/05	06/16/06
	803	Carry Out & Track Out .....	11/08/05	06/16/06
	804	Open Areas .....	11/08/05	06/16/06
	805	Paved & Unpaved Roads .....	11/08/05	06/16/06
	806	Conservation Management Practices .....	11/08/05	06/16/06

On July 21, 2006, we found that the State's submittal for ICAPCD Regulation VIII, Rules 800–806, met the completeness criteria in 40 CFR part 51, Appendix V. A completeness determination by EPA means that the submission provides sufficient information for EPA to evaluate it for action under CAA sections 110(k)(3) and (4).

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

There are no previous versions of Rules 800–806 in the SIP.

#### C. What Is the Purpose of the Submitted Rules?

Exposure to ambient PM<sub>10</sub> at levels above the NAAQS is harmful to human health and the environment, with effects including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to develop a SIP that meets basic requirements for a national ambient air quality standard (NAAQS). If a state has areas that are designated “nonattainment” for a NAAQS, then section 172, and in the case of the PM<sub>10</sub>-specific sections 188 and 189, require the state to submit regulations that control emissions of PM<sub>10</sub> and its precursors, as appropriate, to bring the area into attainment of the NAAQS.

The Imperial Valley is designated nonattainment for PM<sub>10</sub>. Accordingly, ICAPCD is developing regulations intended to attain the NAAQS. ICAPCD's Regulation VIII consists of seven inter-related rules designed to limit emissions of PM<sub>10</sub> from anthropogenic fugitive dust sources in Imperial County. Each rule is described briefly below.

Rule 800, General Requirements for Control of Fine Particulate Matter, provides definitions, a compliance schedule, exemptions and other requirements generally applicable to all

seven rules. It also describes specific exemptions and requirements for the U.S. Department of Defense (DOD), U.S. Bureau of Land Management (BLM) and U.S. Border Patrol (BP). Appendices A and B describe methods for determining compliance with opacity and surface stabilization requirements in Rules 801 through 805.

Rule 801, Construction and Earthmoving Activities, establishes a 20% opacity limit and control requirements for construction and earthmoving activities. Affected sources must submit a dust control plan and comply with other portions of Regulation VIII regarding bulk materials, carry-out and track-out, and paved and unpaved roads. The rule exempts construction of single family homes and waives the 20% opacity limit in winds over 25 mph under certain conditions.

Rule 802, Bulk Materials, establishes a 20% opacity limit and control requirements for bulk material handling, storage, transport and hauling.

Rule 803, Carry-Out and Track-Out, establishes control requirements for removing carry-out and track-out material transported onto paved roads from unpaved roads and areas.

Rule 804, Open Areas, establishes a 20% opacity limit and requires land owners to prevent vehicular trespass and to stabilize disturbed soil on certain open areas. Agricultural operations are exempt from the rule.

Rule 805, Paved and Unpaved Roads, establishes a 20% opacity limit and control requirements for unpaved haul and access roads, canal roads, and traffic areas that meet certain size or traffic thresholds. Single family residences and agricultural operations are exempt from the rule.

Rule 806, Conservation Management Practices, requires agricultural operation sites greater than 40 acres to implement at least one conservation management practice (CMP) for each of these categories: land preparation and cultivation, harvest activities, unpaved roads and unpaved traffic areas.

EPA's technical support document (TSD) has more specific information about these rules. The submission from ICAPCD also provides additional details and includes the Regulation VIII rules.

## II. EPA's Evaluation

### A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing SIP requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM) for certain emissions sources in moderate PM<sub>10</sub> nonattainment areas, and Best Available Control Measures (BACM) for such sources in serious PM<sub>10</sub> nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)).

We used the following guidance and policy documents to evaluate enforceability and to interpret RACM or BACM requirements:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,” (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
3. “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
4. “State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 59 FR 41998 (August 16, 1994).
5. “PM-10 Guideline Document,” EPA 452/R-93-008, April 1993.
6. “Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,” EPA 450/2-92-004, September 1992.

Please see our TSD for other documents we have used in our evaluation.

Because Imperial County is a PM<sub>10</sub> nonattainment area classified as serious (see 40 CFR part 81), Regulation VIII must implement BACM for significant sources of PM<sub>10</sub> in Imperial County. In guidance, 59 FR 41998 (August 16, 1994), we have defined BACM to be, among other things, the maximum degree of emission reduction achievable from a source category which is determined on a case-by-case basis considering energy, economic, environmental impacts and other costs. A source category is presumed to contribute significantly to a violation of the 24-hour PM<sub>10</sub> national ambient air quality standard (150 µg/m<sup>3</sup>) if its PM<sub>10</sub> impact exceeds 5 µg/m<sup>3</sup>. As described in more detail in the TSD, we determined that BACM is required for the following sources of PM<sub>10</sub> emissions in Imperial County:

TABLE 2—SIGNIFICANT SOURCES OF PM-10 IN IMPERIAL COUNTY

Open areas:	Windblown Dust, Other Open Area.
Unpaved roads:	Entrained Unpaved Road Dust, City/County.
	Entrained Unpaved Road Dust, Canal.
	Windblown Dust, Unpaved City/County Road.
	Windblown Dust, Unpaved Canal Road.
	Windblown Dust, Unpaved Farm Road.
Agricultural lands:	Tilling.
	Windblown Dust, Non-Pasture Agricultural Lands.

We based the list of significant sources in Table 2 in part on ICAPCD's analysis of such sources in its 2009 PM<sub>10</sub> attainment plan.<sup>1</sup> However, ICAPCD excluded from its analysis exceedances in 2006 and 2007 that it deemed to be caused by high wind exceptional events. As a result of the exclusion of these exceedances, ICAPCD's list of significant sources did not include any windblown dust sources. The State formally sought to exclude the 2006 and 2007 exceedances for regulatory purposes under EPA's exceptional events rule (40 CFR 50.1(j) and 50.14).<sup>2</sup>

On December 22, 2009, EPA did not concur with the State's request to

<sup>1</sup> "2009 Imperial County State Implementation Plan for Particulate Matter Less Than 10 Microns in Aerodynamic Diameter, Final," August 11, 2009, section 3.2.

<sup>2</sup> Letter from James N. Goldstene, ARB, to Deborah Jordan, EPA, May 19, 2009, requesting exclusion of September 2, 2006, April 12, 2007, and June 5, 2007 Imperial County PM<sub>10</sub> exceedances.

exclude the 2006 and 2007 exceedances as due to high wind exceptional events.<sup>3</sup> EPA adjusted ICAPCD's significant source analysis to reflect this nonconcurrency, and as a result identified windblown dust from open areas, unpaved roads and non-pasture agricultural lands to be significant sources as reflected in Table 2. We have included the documents supporting our December 22, 2009 nonconcurrency in the docket for this proposed rule.

In addition to the sources in Table 2 above, we believe BACM is required for unpaved traffic areas and agricultural harvest operations. These activities occur at the same facilities and are integrally related to other activities identified as significant (i.e., unpaved roads and tilling respectively). By analogy, where enforceable volatile organic compound (VOC) reasonably available control technology (RACT) level controls are required for refineries, SIP rules generally impose leak detection and repair requirements on valves, flanges, threaded connections, and other related equipment even if emissions from any one of these taken individually might be much smaller than the major source threshold requiring RACT.

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

Rules 800–806 improve the SIP by providing more stringent emission limits, monitoring, recording, and recordkeeping provisions for these sources compared to existing provisions in the SIP for the ICAPCD portion of California. The rules are largely consistent with the relevant statutory requirements, and with relevant policy and guidance regarding enforceability, RACM and BACM. Rule provisions that do not meet the evaluation criteria are summarized below and discussed further in the TSD.

#### *C. What Are the Rules' Deficiencies?*

While, as indicated above, BACM is determined on a case-by-case basis, the identification of potential BACM for a significant source category in Imperial County necessarily involves a consideration of control measures adopted and/or implemented in other geographical areas for the same and similar source categories. Therefore, in evaluating Regulation VIII, we have compared its individual rules to analogous requirements in the South Coast Air Quality Management District

<sup>3</sup> See letter, with enclosure, from Laura Yoshii, EPA, to James Goldstene, ARB, Re: Exceptional events requests regarding exceedances of the PM-10 NAAQS in Imperial County, CA, December 22, 2009.

(SCAQMD), San Joaquin Valley Air Pollution Control District (SJVAPCD), Maricopa County Air Quality Department (MCAQD), Clark County Department of Air Quality and Environmental Management (CCDAQEM) and other areas. In doing so, we recognize that some variability exists among sources in different geographical areas, and that technically and economically feasible controls in one area may not be feasible in another area.

Based on our analysis, we believe that Regulation VIII is generally consistent with analogous requirements in other serious PM<sub>10</sub> areas and includes many provisions consistent with CAA BACM requirements and with EPA's established policy and guidance. However, the deficiencies discussed below preclude EPA's full approval of Regulation VIII. Sections II.C.1 through 3 below identify deficiencies related to sources for which BACM is required as discussed above in Section II.A. Section II.C.4 below identifies one deficiency related to the Regulation VIII rule for bulk materials, a source category for which BACM is not currently required based on the information available to EPA to date. A number of these deficiencies are discussed in more detail in the TSD.

#### 1. BACM-Related Deficiencies For Open Areas

##### a. Recreational Off-Highway Vehicle Activity

Recreational off-highway vehicle (OHV)<sup>4</sup> activity causes much of the PM<sub>10</sub> emissions from open areas in Imperial County. Rule 804 regulates only a small portion of these emissions.<sup>5</sup> The vast majority of the OHV emissions in Imperial County are addressed only by requirements in Rule 800 Section F.5 for dust control plans (DCPs) for sources under the control of BLM. While BLM is required to describe in the DCPs the dust control measures that it intends to implement, BLM is not required to implement any specific BACM-level controls for OHV use, and ICAPCD has not provided an analysis of BACM for OHV activity.

ICAPCD must provide an analysis of potential BACM controls for OHV activity in open areas and on unpaved

<sup>4</sup> As used in this discussion and in the TSD, the term "off-highway vehicle" or OHV includes all vehicles subject to the exemption in Rule 800 Section E.6 for recreational use of public lands in Imperial County.

<sup>5</sup> This small portion includes some emissions from OHV activity in Ocotillo Wells State Park where Rule 804 is apparently not being implemented even though State lands are not exempted from the rule's requirements.

roads and paths that are exempt from the specific requirements and measures in Rules 804 and 805 and identify, adopt and submit any appropriate revisions to Rules 800, 804 and 805. Such analysis should address as its starting point measures in EPA's 1992 RACM guidance at 57 FR 18070 (April 28, 1992) and analogous requirements in other geographical areas such as Arizona Revised Statute § 49-457.03 and Clark County Air Quality Regulations, Section 90. ICAPCD should evaluate the feasibility and impacts of additional restrictions in recreational OHV areas, such as closing some of the 250 square miles that are open to OHV use that are particularly likely to impact populations, and restricting OHV activity during summer months when there is virtually no rain to reform surface crusts. In addition, ICAPCD must implement Rules 804 and 805 on all State lands used by OHVs or demonstrate in its BACM analysis that an exemption for OHV activity on such lands is appropriate.

Please see Section III.B.1 of our TSD for further discussion of this deficiency.

#### b. Definition of "Disturbed Surface"

The term "disturbed surface area" is used in several Regulation VIII rules but is never defined. For example, Rule 804 applies to a source category for which BACM is required and relies on the undefined term to describe rule applicability in Rule 804 Section B. In order to ensure that these rules are enforceable at a BACM level, ICAPCD must define "disturbed surface area" as do, for example, SJVAPCD Rule 8010 and SCAQMD Rule 403.

### 2. BACM-Related Deficiencies for Unpaved Roads

#### a. Unpaved Non-Farm Roads

The CAA requires ICAPCD to implement BACM by 2008 (i.e., four years after reclassification to serious).<sup>6</sup> Rule 805 Section E.7 allows the County until 2015 to stabilize heavily-travelled unpaved roads. This schedule is inconsistent with the statutory requirement and ICAPCD has not provided adequate evidence that this schedule is as expeditious as practicable, based upon economic feasibility or any other appropriate consideration. In evaluating economic feasibility of a measure that depends on public funding, EPA considers past funding of similar activities and

availability of funding sources to determine whether public agencies have made good faith efforts to expeditiously implement the available control measures. ICAPCD must expedite the schedule for implementation of this measure or demonstrate good faith efforts to increase funding and priority of road stabilization projects consistent with national guidance. Please see Section III.B.3 of our TSD for further discussion of this deficiency.

Rule 805 Section E.7's requirement to stabilize all non-exempt unpaved County roads is also not adequately enforceable as currently structured. If ICAPCD retains the same structure, it must revise Rule 805 Section E.7 to clarify that the County must: (a) Implement (and not just submit) a stabilization plan; (b) stabilize different unpaved roads each year; and (c) maintain all stabilized roads.

#### b. Unpaved Farm Roads and Traffic Areas

Rule 805 Section D.2 exempts agricultural roads and traffic areas from the opacity and stabilization requirements applicable to non-agricultural operation sites. Farm roads and traffic areas are only required to implement a CMP from the menus for unpaved roads and traffic areas in Rule 806. In contrast, for example, SJVAPCD requires that CMPs be implemented to meet opacity and stabilization requirements at the following thresholds: Unpaved farm roads with  $\geq 75$  VDT or  $\geq 25$  average daily vehicle trips by three or more axle vehicles; unpaved traffic areas with  $\geq 50$  average daily vehicle trips (on an annual basis) or  $\geq 25$  average daily vehicle trips (on an annual basis) by three or more axle vehicles. ICAPCD must remove the exemption in Rule 805 Section D.2 or demonstrate how BACM is met in Imperial County for farm roads and traffic areas that are subject to less stringent requirements than other roads and traffic areas in the County and farm roads and traffic areas in other areas.

Rule 806 Sections E.3 and E.4 list CMPs intended to control emissions from agricultural unpaved roads and traffic areas but these measures are broadly defined and there is no other mechanism in the rule to ensure specificity. The absence of sufficiently defined requirements makes it difficult for regulated parties to understand and comply with the requirements, and makes it difficult for ICAPCD or others to verify compliance and to enforce the requirements if necessary. The lack of specificity similarly renders it difficult to assess whether the measures constitute BACM level controls.

ICAPCD must revise Rule 806 to ensure that unpaved road and traffic area CMPs are enforceable and are implemented at a BACM level or demonstrate why such a rule revision is not necessary. SJVAPCD Rule 4550, for example, relies on an application submittal and approval process to ensure sufficient specificity of the particular measures implemented at each source. Great Basin Unified Air Pollution Control District (GBUAPCD) Rule 502 also has an application submittal and approval process. Alternatively, there may be another mechanism to ensure adequate specificity such as by revising and clarifying ICAPCD's CMP application forms.

#### c. Border Patrol Roads

Rule 800 Section F.6.c exempts roads owned or operated by BP from Rule 805 requirements that are "inconsistent with BP authority and/or mission." It is not clear what this exemption is intended to address, or how it would be implemented and enforced, particularly because both BP and ICAPCD staff have informally informed EPA that BP does not own or operate any roads in Imperial County. ICAPCD must either remove this exemption or narrow the exemption to specific mission activities and demonstrate that the exemption is minimized and necessary, consistent with BACM requirements.

### 3. BACM-Related Deficiencies for Agricultural Lands

#### a. Tilling and Harvesting

Rule 806 Sections E.1 and E.2 list CMPs intended to control emissions from agricultural land preparation and cultivation (including tilling), and harvest activities, but these measures are broadly defined and there is no other mechanism in the rule to ensure specificity. The absence of sufficiently defined requirements makes it difficult for regulated parties to understand and comply with the requirements, and makes it difficult for ICAPCD or others to verify compliance and to enforce the requirements if necessary. The lack of specificity similarly renders it difficult to assess whether the measures constitute BACM level controls. ICAPCD must revise Rule 806 to ensure that tilling and harvesting CMPs are enforceable and are implemented at a BACM level or demonstrate why such a rule revision is not necessary. SJVAPCD Rule 4550, for example, relies on an application submittal and approval process to ensure sufficient specificity of the particular measures implemented at each source. GBUAPCD Rule 502 also has an application submittal and

<sup>6</sup> On August 11, 2004, EPA reclassified Imperial County as serious nonattainment for PM<sub>10</sub>. 69 FR 48835. Since 2008 has passed, BACM is now required to be implemented as expeditiously as practicable. *Delaney v. EPA*, 898 F.2d 687 (9th Cir. 1990).

approval process. Alternatively, there may be another mechanism to ensure adequate specificity such as by revising and clarifying ICAPCD's CMP application forms.

In addition, Rule 806 Section E requires one CMP from the "land preparation and cultivation" category and one CMP from the "harvest" category, while SJVAPCD Rule 4550 requires an additional CMP from the "cropland-other" category. GBUAPCD Rule 502 also requires that one CMP each be selected from the "land preparation and cultivation," "harvest," and the "cropland-other" categories. ICAPCD must similarly require an additional CMP for cropland, or demonstrate why that is not appropriate.

#### b. Windblown Dust

Windblown dust from non-pasture agricultural lands is also a significant source of PM<sub>10</sub> that requires BACM independent of agricultural tilling. The CMPs in Rule 806 Section E, however, mainly control emissions by reducing the number of vehicle passes across fields, and sources are not required to select BACM level practices for controlling windblown dust from active or fallow agricultural fields. ICAPCD must revise Rule 806 to require BACM level windblown dust controls. In general, EPA believes that the evaluation of BACM level controls for a particular source or activity should include consideration of U.S. Department of Agriculture (USDA) approved conservation systems and activities. Although these guidelines may not specifically be designed to minimize air pollution, they are intended to be feasible and effective techniques that will reduce windblown dust, and thus would be appropriate measures to consider for BACM for such sources or activities for PM<sub>10</sub>. SCAQMD Rule 403 provides an example of such controls. Please see Section III.B.4 in our TSD for further discussion of this deficiency.

#### 4. Non-BACM Deficiency

Rule 802 Section D.1 allows the Air Pollution Control Officer (APCO) to set aside controls that might be used instead of water to stabilize surfaces of bulk materials. This discretion allows ICAPCD to approve alternatives to the applicable SIP without following the SIP revision process described in CAA section 110. Moreover, ICAPCD has not demonstrated why such discretion is needed for measures such as covering, enclosing or sheltering material piles. While we prefer removal of the exemption and APCO discretion,

SJVAPCD Rule 8031 remedies the enforceability issue by requiring EPA approval.

#### D. EPA Recommendations To Further Improve the Rules

Our TSD describes additional rule revisions that we recommend for the next time ICAPCD modifies the rules, but are not the basis for disapproval at this time.

### III. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the seven inter-related Regulation VIII rules to strengthen the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the seven inter-related Regulation VIII rules under sections 110(k)(3), 110(a) and 189(a)(1)(C) and (b)(1)(B) for the reasons set forth in Section II.C. of this proposed rule. If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies set forth in sections II.C.1 through 3 of this proposed rule within 18 months of the disapproval. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the 2-year clock for the federal implementation plan (FIP) requirement under section 110(c). The deficiency identified in Section II.C.4 of this proposed rule would not trigger sanctions or a FIP obligation at this time because it does not appear that it is associated with SIP revisions that are required by the CAA.

Note that the submitted rules have been adopted by ICAPCD, and EPA's final limited disapproval would not prevent ICAPCD from enforcing them.

We will accept comments from the public on our proposed limited approval and limited disapproval action for 30 days from publication in the **Federal Register**.

### 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 or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP limited approval/limited disapproval 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 limited approval/limited disapproval action

proposed 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 proposes to approve and disapprove 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 proposes to approve or disapprove 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 proposed 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.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

#### *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.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 10, 2010.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2010–3513 Filed 2–22–10; 8:45 am]

**BILLING CODE 6560–50–P**

### **CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

**45 CFR Parts 2510, 2522, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2550, 2551, and 2552**

**RIN 3045–AA51**

#### **Serve America Act Amendments to the National and Community Service Act of 1990**

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Proposed rule.

**SUMMARY:** On April 21, 2009, President Obama signed into law the Edward M. Kennedy Serve America Act (“The Serve America Act” or “SAA”). The Serve America Act reauthorizes and expands national service programs administered by the Corporation for National and Community Service (“the Corporation”) by amending the National and Community Service Act of 1990 (“NCSA” or “the Act”) and the Domestic Volunteer Service Act of 1973 (“DVSA”). The Corporation publishes this proposed rule to implement changes to the operation of the National Service Trust under the Serve America Act. This proposed rule provides flexibility for exceptions to the 80 percent cost reimbursement requirement for Senior Companion and Foster Grandparent programs based on hardship. In addition, this proposed rule reorders and renumbers certain parts of the existing regulations, adds new definitions, and makes several minor technical edits.

**DATES:** To be sure your comments are considered, they must reach the Corporation or before April 26, 2010.

**ADDRESSES:** You may send your comments electronically through the Federal government’s one-stop rulemaking Web site at <http://www.regulations.gov>. You may also mail or deliver your comments to Amy