regulatory action that might be proposed in subsequent stages of this rulemaking to assess the effects on State, local, and Indian tribal governments and the private sector.

Executive Order 12988 (Civil Justice Reform)

The FHWA will evaluate any rule that may be proposed in response to comments received to ensure that such action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA will evaluate any rule that may be proposed in response to comments received to ensure that such action meets the requirements of Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency does not, however, anticipate that any such rule would be economically significant or would present an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA will evaluate any rule that may be proposed in response to comments received to ensure that any such rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

The FHWA will analyze any action that might be proposed in accordance with the principles and criteria contained in Executive Order 13132, and FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA will consult with public authorities regarding any proposed NTIS regulations. The FHWA also anticipates that any action taken will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues.

Executive Order 13175 (Tribal Consultation)

The FHWA will analyze any proposal under Executive Order 13175, dated November 6, 2000. The FHWA preliminarily believes that any proposal will not have substantial direct effects on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, a tribal summary impact statement may not be required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Any action that might be contemplated in subsequent phases of this proceeding will be analyzed for the purpose of the PRA for its impact upon information collection. The FHWA would be required to submit any proposed collections of information to OMB for review and approval at the time the NPRM is issued, and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of any proposed information collection requirements, including, but not limited to: (1) Whether the collection of information would be necessary for the performance of the functions of FHWA, including whether the information would have practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The FHWA will analyze any action that might be proposed for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) to assess whether there would be any effect on the quality of the environment.

Executive Order 13211 (Energy Effects)

The FHWA will analyze any proposed action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, to assess whether there would be any adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Authority: Title 23, United States Code, Sections 116 and 315; 23 CFR 1.27; 49 CFR 1.48(b).

Issued on: November 7, 2008.

Thomas J. Madison, Jr.,

Federal Highway Administrator.

[FR Doc. E8–27265 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0566; FRL–8741–7]

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: Proposed rule.

SUMMARY: EPA is proposing a disapproval of revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) portion of the California State Implementation Plan (SIP), and limited approval and limited disapproval of revisions to the Kern County Air Pollution Control District (KCAPCD) and Mohave Desert Air Quality Management District (MDAQMD) portions of the SIP. These revisions concern particulate matter (PM) emissions from fugitive dust sources. 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 December 18, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0566, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the online 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.

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: 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. 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 and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

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

On July 23, 2007, February 16, 2005, and August 12, 1997 respectively, EPA found that the GBUAPCD Rule 401, KCAPCD Rule 402, MDAQMD Rule 403.1 submittals met the completeness criteria in 40 CFR Part 51, Appendix V. These criteria must be met before formal EPA review begins.

B. Are there other versions of these rules?

On June 6, 1977, EPA approved a prior version of GBUAPCD Rule 401 into the State Implementation Plan (SIP); see 42 **Federal Register** (FR) 28883. There have been no intervening submittals of Rule 401. We have not approved prior versions of KCAPCD Rule 402 and MDAQMD 403.1 into the SIP and there have been no intervening submittals of these rules to consider and we are acting on the most recent submittal of these two rules.

C. What is the purpose of the submitted rules?

PM contributes to effects that are harmful to human health and the environment, 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 submit regulations that control PM emissions. These rules are designed to limit the emissions of visible air contaminants, usually but not always particulate matter (PM) emissions at industrial sites, unpaved roads, and open areas. EPA's technical support document (TSD) for each rule has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating these rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)).

The GBUAPCD regulates a PM nonattainment area classified as serious (see 40 CFR part 81). The overwhelming significant source of PM emissions in the Owens Valley Planning Area (OVPA) is the Owens dry lakebed. Consequently, BACM measures are required for the lakebed sources of emissions (see 68 FR 48305). At present, Rule 401 regulates other sources of fugitive dust emissions that are not determined to be significant within the 1998 BACM SIP and in comparison with PM emissions from the Owens dry lakebed. Consequently, Rule 401 must meet our enforceability criteria in implementing its requirements, but not specific BACM or RACM requirements for its sources of PM emissions. Also, Rule 401 is not a required Clean Air Act PM submittal.

KCAPCD regulates a PM attainment area in the Indian Wells Valley, formerly classified as a moderate PM nonattainment area. (see 40 CFR part 81). The Indian Wells Valley maintenance plan did not assign Rule 402 to its list of six RACM measures and the rule is not cited as being a principal SIP control measure in attaining and maintaining the PM–10 standard (see 68

FR 24386). Subsequently, the Kern County portion of the Indian Wells Valley has maintained its attainment of the 24 hour and annual PM–10 standard. Consequently, Rule 402 need not fulfill RACM and the rule is not a required CAA submittal. However, to be approved into the SIP, the rule must meet the enforceability criteria as described by Section 110(a) of the CAA.

MDAQMD regulates a PM nonattainment area in the Trona subregion of the Searles Valley, classified as a moderate PM nonattainment area. (*see* 40 CFR part 81). On August 5, 2002, EPA found that the Trona area met the 24 hour and annual PM–10 standard as of December 31, 1994 (*see* 67 FR 50805 and 66 FR 31873), meaning that between 1992 and 1994 no violations of either PM standard were recorded. Subsequently, the area has maintained its attainment of the 24 hour and annual PM–10 standards. Rule 403.1 need not fulfill RACM because the area was in attainment of the standard at the time of designation and the rule would not advance the area's attainment date (*see* 57 FR 13560, April 16, 1992). To be approved into the SIP, the rule must meet the enforceability criteria as described by Section 110(a) of the CAA. For the purposes of a maintenance plan, Rule 403.1 contains contingency measure provisions; however, EPA has neither approved a maintenance plan for the Trona subregion, nor has EPA invoked the need to implement these contingency measures.

Guidance and policy documents that we use to help evaluate specific enforceability and RACM or BACM requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''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**.

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''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).

5. ''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).

6. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.

7. ''Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,'' EPA 450/2–92–004, September 1992.

B. Do the rules meet the evaluation criteria?

GBUAPCD Rule 401 contains provisions which do not meet the evaluation criteria concerning enforceability. These provisions are summarized below and discussed further in the TSD.

KCAPCD Rule 402 improves the SIP by establishing more stringent emission limits, control measures, and monitoring requirements. The rule is largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. However, the rule has provisions which do not meet the evaluation criteria regarding enforceability. These provisions are summarized below and discussed further in the TSD.

MDAQMD Rule 403.1 improves the SIP by establishing more stringent emission limits, control measures, and monitoring requirements. The rule is largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. However, the rule has provisions which do not meet the evaluation criteria regarding enforceability. These provisions are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

Regarding Rule GBUAPCD Rule 401, the provisions listed below conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

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.

Regarding Rule 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.

D. EPA Recommendations To Further Improve the Rules

We have no additional recommendations.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) of the Act, we are proposing a disapproval of the submitted GBUAPCD Rule 401. If finalized, this action would retain the existing 1977 SIP rule in the SIP and sanctions, pursuant to section 179 of the Act, would not be imposed 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 would not prevent the local agency from enforcing it. Our disapproval sets aside incorporation of the submitted rule within the SIP.

EPA is proposing a limited approval of KCAPCD Rule 402 to improve the SIP, as authorized in sections 110(k)(3) and 301(a) of the Act. If finalized, this action would incorporate the submitted Rule 402 into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will not be imposed under section 179 of the Act, because Rule 402 is not a required submittal under the CAA and is not an essential RACM under the Indian Wells Maintenance Plan. Note that the submitted rule has been adopted by the KCAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

EPA is proposing a limited approval of MDAQMD Rule 403.1 to improve the SIP, as authorized in sections 110(k)(3) and 301(a) of the Act. If finalized, this action would incorporate the submitted Rule 403.1 into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will not be imposed 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. Note that the submitted rule has been adopted by the MDAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed disapproval of GBUAPCD Rule 401 and the proposed limited approvals and limited disapprovals of KCAPCD Rule 402 and MDAQMD Rule 403.1 for the next 30 days.

III. 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 section 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 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 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 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: October 20, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8–27301 Filed 11–17–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 12, 39, and 52

[FAR Case 2008–019; Docket 2008–0001; Sequence 1]

RIN 9000–AL11

Federal Acquisition Regulation; FAR Case 2008–019, Authentic Information Technology Products

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking and public meeting.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are seeking comments from both Government and industry on whether the Federal Acquisition Regulation (FAR) should be revised to include a requirement that contractors selling information technology (IT) products (including computer hardware and software) represent that such products are authentic. The Councils are also interested in comments regarding contractor liability if IT products sold to the Government, by contractors, are not authentic. Additionally, the Councils are seeking comments on whether contractors who are resellers or distributors of computer hardware and software should represent to the Government that they are authorized by the original equipment manufacturer (OEM) to sell the information technology products to the Government. Finally, the Councils invite comments on (1) whether the measures contemplated above should be extended to other items purchased by the Government; and (2) whether the rule should apply when information technology is a component of a system or assembled product.