

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 proposes to approve 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 proposed 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 approves a state rule implementing a Federal standard.

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 proposed 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.*).

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

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: November 2, 2007.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2007-0621; FRL-8497-4]**

**Revisions to the California State Implementation Plan, South Coast Air Quality Management District**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from fugitive dust sources and cement manufacturing plants. We are proposing to approve local rules to 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 20, 2007.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2007-0621, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](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 [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](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 [www.regulations.gov](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, at either (415) 947-4111, or [wamsley.jerry@epa.gov](mailto: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 we are proposing to approve with the dates that they were adopted by the SCAQMD and submitted by the California Air Resources Board.

**TABLE 1.—SUBMITTED RULES**

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD .....	403	Fugitive Dust .....	06/03/05	10/20/05
SCAQMD .....	1156	Further Reductions of Particulate Emissions from Cement Manufacturing Facilities.	11/04/05	12/29/06

On November 22, 2005 and February 14, 2007, respectively, EPA found Rules 403 and 1156 met the completeness criteria in 40 CFR Part 51, Appendix V. The state must meet these criteria before formal EPA review can begin.

*B. Are there other versions of these rules?*

EPA has reviewed, approved, and incorporated into the SIP a prior version of Rule 403 (see 70 FR 69081, November 14, 2005). California has not submitted any subsequent versions of Rule 403. Regarding Rule 1156, California has not submitted a prior version for incorporation into the SIP.

*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.

SCAQMD Rule 403 is designed to limit the emissions of fugitive dust or PM from a variety of activities and sources such as construction sites, bulk material hauling, unpaved parking lots, and disturbed soil in open areas and vacant lots. The rule's provisions include a visible emissions property line standard, requirements to implement Best Available Control Measures (BACM), upwind/downwind PM10 concentration standards, prevention of material track-out onto paved public roads, and special control requirements for large operations (sources greater than 50 acres or with more than 5,000 cubic yards of daily earth-movement). The June 3, 2005 amendments to Rule 403 added BACMs for confined animal feed operations (CAFO) to the rule and amended requirements for weed abatement activities. The new CAFO BACMs apply to manure and feedstock handling, disturbed surfaces, unpaved roads, and equipment parking areas (see the Staff Report Table 1, page 8). The amended requirements for weed abatement activities allow for discing weeds without applying water where the authorized agency determines that watering is not feasible and other effective control measures are used to minimize fugitive emissions and stabilize disturbed soils. Discing activities that meet these requirements are exempt from Rule 403.

SCAQMD Rule 1156 is designed to limit PM from cement manufacturing

facilities. Rule 1156 establishes requirements and control measures for the following: (1) Visible emissions; (2) material loading, unloading, and transferring; (3) material crushing, screening, grinding, blending, drying, mixing, packaging, and other related operations; (4) kilns and clinker coolers; (5) material storage; (6) air pollution control device performance standards; (7) internal roadways and vehicle use areas; and, (8) material track-out. The rule also has provisions for monitoring and determining compliance, recordkeeping, and exemptions from the rule.

EPA's technical support documents (TSD) have more information about these rules.

## II. EPA's Evaluation and Action

### 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 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 SCAQMD regulates a PM nonattainment area classified as serious (see 40 CFR part 81), so both of these rules must implement BACM/BACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACM/RACT or BACM/BACT 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?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, BACM, and SIP relaxations. Each rule is discussed below.

Under Rule 403, the weed abatement amendments provide added control measures for weed abatement activities that are allowed an exemption because it is infeasible to water prior to discing or mowing. Those weed abatement operations that do not use water are subject to disturbed open area stabilization requirements and the rule's fence-line opacity requirement. Also, any added PM emissions that may occur as a result of the exemptions are offset within the SIP by the reduced PM emissions generated by the new CAFO requirements. Consequently, we find that the revisions to Rule 403 do not relax the SIP or interfere with any applicable requirements of the Act.

Rule 1156 is a new rule that strengthens the SIP by requiring additional BACM and MSMs for cement manufacturing facilities. As such, it will not interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirements of the Act. Therefore, approval of this rule is consistent with CAA 110(l). Because this rule does not modify any control requirements in effect prior to November 15, 1990, section 193 of the Act does not apply to our action.

The TSD has more information on our evaluation of these rules.

### C. EPA Recommendations To Further Improve the Rule

The TSD for Rule 403 describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the SCAQMD modifies the rule.

### D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the

Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period that causes us to reconsider this proposed approval action, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Pub. L. 104–4).

This proposed 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 proposes to approve 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 proposed 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 approves a state rule implementing a Federal standard.

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 proposed 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.*).

### 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: November 2, 2007.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*  
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