

### *C. What Are the Purposes of the Submitted Rule and Rule Revisions?*

NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> emissions.

The purpose of the revisions to EDCAPCD Rule 232 is to remedy a deficiency in the October 18, 1994 version of the rule.

The purpose of submitted SBCAPCD Rule 360 is to regulate NO<sub>x</sub> emissions from large water heaters and small boilers.

## **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 CAA), must require Reasonably Available Control Technology (RACT) for major sources of NO<sub>x</sub> in ozone nonattainment areas (*see* section 182(f)) and must not relax existing requirements (*see* sections 110(l) and 193). The EDCAPCD regulates a severe ozone nonattainment area. *See* 40 CFR part 81. Rule 232 must fulfill the requirements of RACT. The SBCAPCD regulates an ozone maintenance attainment area. Rule 360 must fulfill the requirements of RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988) (the Bluebook).
- *State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (the "NO<sub>x</sub> Supplement to the General Preamble"), U.S. EPA, 57 FR 55620 (November 25, 1992).
- *Cost-Effective Nitrogen Oxides (NO<sub>x</sub>) Reasonably Available Control Technology (RACT)*, U.S. EPA Office of Air Quality Planning and Standards (March 16, 1994).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, U.S. EPA Region IX (August 21, 2001) (the Little Bluebook).
- *Determination of Reasonably Available Control Technology (RACT) and Best Available Retrofit Control Technology (BARCT) for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters*,

California Air Resources Board (CARB) (July 18, 1991).

- *Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Utility Boilers*, EPA-453/R-94-023 (March 1994).

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

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. We also believe that Rule 232 corrects the previously identified deficiency regarding the lack of a compliance schedule in the rule. The TSDs have 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 rules because we believe they fulfill 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 rules. If we receive adverse comments by November 13, 2003, 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 December 15, 2003. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this 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 (Pub. L. 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