

regulated by the MDAQMD. This rule controls emission of NO<sub>x</sub> from Portland cement kilns. On January 2, 2002, the EPA finalized approval of a previous version of this rule. CARB submitted comments on the previous version of proposed rule 1161 a few days prior to its scheduled adoption in October 2001. Because delaying adoption could have resulted in offset and highway sanctions for the region, MDAQMD committed to CARB that it would address CARB's comments no later than May 2002.

On March 25, 2002, MDAQMD adopted the amended rule 1161. On June 18, 2002, CARB submitted the revised version of rule 1161 for approval into the SIP. Rule 1161, as revised, addresses CARB's comments.

The TSD has more information about this rule.

## II. EPA's Evaluation and Action

### A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The MDAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1161 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. Issue Relating to VOC Regulation, Cut points, Deficiencies, and Deviations

(the Blue Book), U.S. EPA, May 25, 1988.

2. "Guidance Document for Correcting VOC Rule Deficiencies", U.S. EPA Region 9, August 21, 2001 (the little bluebook).

3. State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendment of 1990 (the "NO<sub>x</sub> Supplement to the General Preamble"), U.S. EPA, 57 FR 55620, November 25, 1992.

4. Nitrogen Oxides (NO<sub>x</sub>) Reasonably Available Control Technology (RACT) for the Repowering of Utility Boilers, U.S. EPA Office of Air Quality Planning and Standards, March 9, 1994.

5. Alternative Control Techniques (ACT) Document, NO<sub>x</sub> Emission from Cement Manufacturing, U.S. EPA, March 1994, EPA 453/R-94-004.

6. State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, dated September 20, 1999.

### B. Does This Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations.

The TSD has more information on our evaluation.

### C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it

fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by March 31, 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 April 28, 2003. This will incorporate this rule 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. Background Information

### Why Was This Rule Submitted?

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. Table 2 lists some of the national milestones leading to the submittal of this local agency NO<sub>x</sub> rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978 .....	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988 .....	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990 .....	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991 .....	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

## IV. 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,