F. 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 final 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 act on 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.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, 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).

G. Unfunded Mandates

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 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 promulgated 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 acts on 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.

H. 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.

EPA believes that VCS are inapplicable to today's action because it doesnot require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 14, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(279)(i)(A)(*7*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(279) * * *

(i) * * *

(A) * * *

(*7*) Rule 405, adopted on September 14, 1999.

* * * * *

[FR Doc. 02–2840 Filed 2–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA249–0324; FRL–7134–4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on

August 7, 2001 and concern oxides of nitrogen (NO_X) emissions from mobile sources (Class 7 and 8 heavy duty vehicles, marine vessels, ocean-going marine vessel hotelling operations, truck and trailer refrigeration units), and area sources (agricultural pumps). We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on March 11, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Lily Wong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4114.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On August 7, 2001, (66 FR 41174), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1612.1	Mobile Source Credit Generation Pilot Program	03/16/01	05/08/01
SCAQMD	1631	Pilot Credit Generation Program for Marine Vessels	05/11/01	05/31/01
SCAQMD	1632	Pilot Credit Generation Program for Hotelling Operations	05/11/01	05/31/01
SCAQMD	1633	Pilot Credit Generation Program for Truck/Trailer Refrigeration Units.	05/11/01	05/31/01
SCAQMD	2507	Pilot Credit Generation Program for Agricultural Pumps	05/11/01	05/31/01

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 60-day public comment period. During this period, we received comments from the following parties.

1. Suma Peesapati, Communities for a Better Environment (CBE); letter dated October 9, 2001 and received October 9, 2001.
2. Reed L. Royalty, Orange County Taxpayers Association (OCTA); letter dated August 30, 2001 and received September 6, 2001.
3. William J. Quinn, California Council for Environmental and Economic Balance (CCEEB); letter dated October 5, 2001 and received October 5, 2001.
4. Jon K. Owyang, Market-Based Solutions (MBS); letter dated October 8, 2001 and received October 8, 2001.
5. Jack Brunton, Sempra Energy (SE); letter dated October 8, 2001 and received October 9, 2001.
6. Michael J. Carroll, Latham & Watkins (LW); letter dated October 9, 2001 and received October 9, 2001.
7. Detrich B. Allen, City of Los Angeles (CLA); letter dated October 9, 2001 and received October 9, 2001.

The comments and our responses are summarized below.

Comment 1: CBE commented that the RECLAIM program is fundamentally flawed and, as a result, has not achieved the emission reductions promised during program development eight years ago. Among the problems that CBE describes with RECLAIM are: (a) Initial over-allocation of credits resulting from artificially inflated baselines; (b) Inadequate safeguards against fraud and uncertainty; (c) Emissions have actually increased from the two largest NO_X source categories.

Response 1: RECLAIM is implemented by SCAQMD's Regulation 20 and establishes a declining cap on emissions from medium and large stationary NO_X sources. Regulations 16 and 25 provide mechanisms to generate emission reduction credits from mobile sources and area sources that can be purchased by RECLAIM sources. EPA is not acting on Regulation 20 at this time. We are acting on rules in Regulations 16 and 25, which can and should be evaluated independently. Regulation 16 and 25 sources are not also subject to Regulation 20 and Regulation 20 does not need to function well to achieve emission reductions from Regulations 16 and 25. Even if Regulation 20 has achieved no real emission reductions to date, rules in Regulation 16 and 25 should be approved if they comply with the CAA as described in relevant national policy and guidance. As discussed in today's notice and the August 7, 2001 proposal, we believe these rules in Regulations 16 and 25 do comply with the CAA. Comments on Regulation 20 are not relevant to EPA's SIP action on the Regulation 16 and Regulation 25 credit rules.

Comment 2: CBE commented that SCAQMD and EPA should fix RECLAIM's defects rather than developing and approving the Regulation 16 and 25 rules. Regulations 16 and 25 would increase the supply of cheap credits which will exacerbate the problem with the RECLAIM program.

Response 2: We agree that SCAQMD should correct any problems with the existing RECLAIM program. However, as discussed in Response 1, Regulations 16 and 25 can and should be evaluated independently from Regulation 20. While we do not believe these reductions will be inexpensive, as suggested by the comment, there would be nothing inherently wrong if they were. An important feature of economic incentive programs like this is to allow industry to achieve the most economically efficient emission reductions. The commenter may be alleging that the emission reduction credits will be cheap because they will not come from real emission reductions. The commenter, however, provides no evidence or support for this. If used, we believe these credit rules will generate real emission reductions. As discussed in the Technical Support Documents (TSDs) to our August 7, 2001 proposal, the rules are carefully designed to assure that reductions are surplus, quantifiable, enforceable and permanent. As we have stated numerous times, the criteria for judging the adequacy of emission reduction credits, i.e., that the emission reductions are surplus, quantifiable, enforceable and permanent, are based upon fundamental requirements of the CAA. See ''Emissions Trading Policy Statement,'' 51 FR 43814, 43831–43832 (December 4,

1986), and ''Economic Incentive Program Rules,'' 59 FR 16690, 16691 (April 7, 1994).

We note also that the Regulation 16 and 25 rules are designed to achieve significant environmental benefit. In particular, the rules require that all NO_X emission reduction credits be discounted by 9–10% for the benefit of the environment. The rules will also significantly reduce particulate matter (PM) emissions, since no PM emission reduction credits are awarded. For these reasons, the approval of these credit rules will strengthen the SIP, regardless of the past performance of the RECLAIM program.

Comment 3: CBE commented that SCAQMD has not complied with Rule 2015 which offers an appropriate ''fix.'' Rule 2015 requires SCAQMD to conduct a thorough investigation of the high price of credits in the context of the compliance and enforcement program, and of whether the program provides appropriate incentives to comply.

Response 3: SCAQMD'S implementation of Rule 2015 is not relevant to this rulemaking. Rule 2015 does not preclude the SCAQMD from developing credit rules in Regulations 16 and 25. See also Responses 1 and 2.

Comment 4: CBE commented that mobile to stationary source trading results in environmental justice (EJ) impacts. While the benefits from emission reductions from mobile sources occur over a widespread area, the emissions increases occur at stationary sources, often in low-income communities of color. Further, even if the emission reductions occur in low-income communities of color, pollution is merely transferred from mobile to stationary sources in the same community.

Response 4: EPA agrees that programs which allow volatile organic compound (VOC) trading should address EJ, because many VOCs are also hazardous air pollutants (HAPs) that may impact health of people near the emission sources. This comment is not relevant to the five credit rules, however, which only allow trading of NO_X emissions and not VOC or HAPs. NO_X emissions combine with VOCs to form ozone, which can have significant health impacts. But because ozone forms fairly slowly and then disperses throughout the South Coast Air Basin, it is highly unlikely that increased NO_X emissions in any one South Coast neighborhood will disproportionately increase ozone levels in the same neighborhood. NO_X emissions also contributes to PM formation, but the increased health impacts from this PM in the South Coast is also a regional and not a localized problem for the same reasons, and thus does not have EJ implications. Lastly, NO_2, a component of NO_X emissions, can have health impacts. To considerable extent, the same arguments regarding regional rather than localized impacts would apply here. In addition, all areas of South Coast and the country meet the health-based NO_2 standard, so no health impacts are expected from NO_2.

Comment 5: CBE commented that monitoring mobile emission reduction programs is difficult and often leads to ''phantom trades,'' citing SCAQMD's experience with Rule 1610 regarding car scrappage.

Response 5: EPA believes that emission reductions from these five credit rules are real, surplus, quantifiable, enforceable, and permanent. These five credit rules are fundamentally different than the car scrappage program because they require utilization of a cleaner technology to generate emission reduction credits. Rule 1610, on the other hand, assumed that emissions would be reduced by scrapping cars that would no longer operate. While we agree that Rule 1610 was significantly flawed, its problems (e.g., some scrapped cars had not been in use and some cars' parts were used after being scrapped) do not relate to these credit rules. Oversight, for example, of these credit rules is more straightforward because they require changes to equipment which can be easily verified. The credit rules also require extensive monitoring, recordkeeping and reporting to verify the emission reduction credits.

Comment 6: CBE commented that proper functioning of the RECLAIM market necessitates a closed universe of credits. This is why, for example, excess emissions are deducted from sources' annual credit allocation—to regulate the total amount of pollution on the market.

Response 6: It is not essential that the total amount of pollution in the market remain fixed, but that the basin-wide emissions be reduced. A closed universe of emission reduction credits in RECLAIM is not necessary if new emission reductions are real and appropriately addressed in the emissions inventory. As discussed in Response 2, the five credit rules are carefully designed to assure that reductions are real by being surplus (which includes being addressed in the emissions inventory), quantifiable, enforceable and permanent.

We also evaluated the credit rules to determine whether demand shifting could create ''paper'' reductions by shifting activity to sources not participating in the program. Demand shifting is not a problem because emission reduction credits can only be generated to the extent that generators lower emission rates and actually engage in the activity. If, for example, a generator completely shifts his activity level to sources not participating in the program, no emission reduction credits are generated and the emission rate of the non-participating sources would not increase. We also evaluated whether the credit rules could increase activity and emissions from the source categories they address. We are aware of no basis for this to occur. Any increase in source category activity would be a function of growth that would be factored into the attainment plan.

Comment 7: CBE commented that CAA section 110(a) requires SIPs to include programs for enforcement of control measures, and to assure adequate personnel, funding and authority. SCAQMD has a minimum 2-year lag in enforcing existing programs, and the five credit rules impose a new set of monitoring, reporting and calculating criteria that will substantially increase SCAQMD's enforcement burden. SCAQMD does not plan to increase its enforcement capacity to properly oversee these new requirements in violation of section 110(a).

Response 7: EPA originally approved California's compliance with the section 110(a)(2)(E) personnel, funding and authority requirement in 1972, and we have had no cause to question SCAQMD's continued compliance since then. Enforcement cases take time to identify, develop and negotiate, and while a two-year lag to close them out is not ideal, in itself it does not justify questioning compliance with section 110(a)(2)(E). We note also that SCAQMD is by far the largest and best funded local air pollution regulatory agency in the country, with over 750 staff and an annual operating budget of over $85 million. In addition, we understand that in the last two and a half years, SCAQMD has added 22 inspectors which may help SCAQMD in determining RECLAIM compliance. We understand that the emission reduction projects under these five credit rules are administered by SCAQMD staff in a different office than staff working on RECLAIM compliance.

Comment 8: CBE commented that approving the credit rules will relax existing requirements in violation of CAA section 110(l). Section 110(l) directs EPA to not approve SIP revisions that interfere with attainment, reasonable further progress or any other applicable requirement. Credit rule approval would delay real emission

reductions by postponing installation of available control equipment on RECLAIM sources, and thus interfere with reasonable further progress and attainment in the South Coast.

Response 8: If used, we believe these credit rules will generate real emission reductions. We agree that use of these rules may mean some available controls are not installed on RECLAIM sources. However, because the new emission reductions are real, and additional environmental benefit is built into the Regulation 16 and 25 rules, we expect the rules to result in a net decrease in emissions, and not interfere with attainment, reasonable further progress or any other applicable requirement in violation of CAA section 110(l). See also Responses 2 and 6.

Comment 9: CBE provided information regarding California's alleged power crisis and commented that the crisis may not have been responsible for the price spike in RECLAIM credits. If it was, the energy crisis is over and doesn't justify changes to the RECLAIM program. If it wasn't, the price reflects the true cost of foregoing pollution control and represents a healthy market making up for years of dysfunction. This is not the time to flood the market with more credits which will artificially drive down credit prices and delay real emission reductions.

Response 9: As discussed in Response 2 and elsewhere, we believe the five credit rules comply with the CAA and will benefit the environment. The justification for developing these rules is not a criteria in our evaluation.

Comment 10: CBE commented that, at a minimum, SCAQMD should limit the amount of new emission reduction credits that can enter the RECLAIM market to prevent: (a) Flooding the market with emission reduction credits that drive down credit prices and continue a dysfunctional market that provides no incentives for pollution control; (b) eviscerating the potential benefits of compliance plans under proposed RECLAIM Rules 2009 and 2009.1; and (c) violating CAA section 110(l).

Response 10: See Responses 1, 2, 6, 8, and 9. In addition, SCAQMD's staff reports estimate that the maximum NO_X emission reduction credits that will be generated from the five credit rules is approximately 2.75 to 3.96 tons/day. Even if this entire amount of emission reduction credit is generated, it is unlikely to flood the RECLAIM credit market, which currently contains approximately 32.45 tons/day.

Comment 11: CBE commented that Rule 1612.1 contains only 9% instead of the traditional 10% environmental benefit, in violation of CAA section 110(l). The 10% benefit helps ensure that pollution credit programs reduce pollution, and helps mitigate the margin of error associated with emission measurement and emission reduction credits calculation.

Response 11: EPA evaluates environmental benefit as an issue separate from uncertainty. EPA however agrees that technical uncertainty must also be addressed. We believe that uncertainty in measuring emissions and calculating emission reductions has been addressed by establishing conservative emission quantification protocols in these rules. For example, the baseline emission rate in Rule 1612.1 is the emission rate for a new on-highway diesel engine that meets both EPA and CARB certified exhaust engine standards. Applying certified engine standards helps remove the uncertainty relating to the remaining useful life of the existing diesel engine, and will result in a conservative estimate of baseline emissions, since we expect that the actual emission rate of the existing diesel engines will be higher than the baseline emission rate specified in the emission quantification protocols. Technical uncertainty is also mitigated by the use of certified engine standards for the optional emission factors in Rule 1612.1. Under the CAA and other federal regulations, manufacturers must submit applications to obtain a certificate of conformity to EPA on the basis of engine(s) testing that conforms to the requirements of the EPA Test Procedures, and where applicable, in accordance with the California Exhaust Emission Standards and Test Procedures for new model year engines.

As discussed in our August 7, 2001 proposal, EPA published the EIP guidance, ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001) in January 2001 to help ensure consistent application of the CAA regarding economic incentive programs like RECLAIM and the five credit rules. The EIP guidance suggests that a 10% emission reduction credit discount generally demonstrates adequate environmental benefit consistent with the CAA, but also allows States to demonstrate environmental benefit other ways. Nine percent of all NO_X emission reductions generated under Rule 1612.1 will be retired for benefit of the environment and cannot be used to offset emissions at RECLAIM sources. Rule 1612.1 activity as well as the activities in the other credit rules will also significantly reduce PM emissions; but since no PM emission reduction credits are awarded or can be used by RECLAIM sources, all the PM emission reductions fully benefit the environment. These PM emission reductions are important to the demonstration of overall environmental benefit from Rule 1612.1 and, in combination with the 9% NO_X emission reduction credit discount, are consistent with the EIP guidance and the CAA.

Comment 12: CBE commented that the CAA prohibits use of mobile source emission reduction credits from the five rules for NSR offsets. CAA section 173(a)(1)(A) states that offsets must be obtained ''from existing sources in the region.'' CAA section 111(a)(6) defines ''existing source'' as ''any stationary source other than a new source.'' Therefore, NSR offsets must be obtained from stationary, not mobile sources.

Response 12: CBE misunderstands the purpose and application of section 111 of the CAA. The title of section 111 is also a description of its limited application; ''Standards of Performance for New Stationary Sources.'' The definition cited by CBE in section 111(a)(6) applies only to the stationary sources covered by section 111. That definition is not applicable to or relevant for these credit rules, which are being included into the California SIP pursuant to section 110 of the CAA. Had Congress wished to limit the generation of offsets to stationary sources, it would have inserted ''stationary'' in front of ''sources'' in the language quoted by CBE from section 173(a)(1)(A) of the CAA. Congress was obviously aware of this distinction, having defined ''stationary source'' for purposes of the CAA in section 302(z). Since section 173(a)(1)(A) uses the broader term ''sources,'' EPA has concluded that this can include mobile sources.

Comment 13: CBE has commented that EPA's reliance on the 2001 EIP Guidance as the basis for proposing approval of the credit rules is illegal. The 2001 EIP guidance has no legal authority and calls for a relaxation of standards proposed in other policy statements and rules. The 2001 EIP guidance cannot change standards that have gone through the formal rulemaking process, such as the 1986 Emissions Trading Policy Statement (ETPS) and the 1994 EIP rule, and surely cannot trump federal CAA requirements.

Response 13: While the 1986 ETPS was published in the **Federal Register**, it was guidance, not regulation and did not, as CBE suggests, go through formal rulemaking. Similarly, the 1994 EIP explains that it was guidance for discretionary programs such as these five credit rules. The 2001 EIP is EPA's most recent guidance for economic

incentive programs. EPA'S publication of the 1986 ETPS, 1994 EIP, and 2001 EIP did not constitute a final determination for discretionary programs and none of them were intended to trump CAA requirements. They have all been used, however, to help assure consistent interpretation of the CAA where its application to detailed EIP requirements is unclear. As stated earlier, the criteria for judging the adequacy of emission reduction credits, *i.e.,* that the emission reductions are surplus, quantifiable, enforceable and permanent, are based upon fundamental requirements of the CAA. See ''Emissions Trading Policy Statement,'' 51 FR 43814, 43831–43832 (December 4, 1986), and ''Economic Incentive Program Rules,'' 59 FR 16690, 16691 (April 7, 1994).

The next set of comments are summarized from letters CBE wrote to SCAQMD during development of the five credit rules and were attached to CBE's August 9, 2001 comment letter to EPA. Since CBE's August 9, 2001 letter is quite extensive and raises many of the same issues as the attachments, we believe the attachments were included only as background information and not intended as comments to our August 7, 2001 proposal. We also note that many of the issues in the attachments are not relevant to our August 7, 2001 proposal because they were raised in context of SCAQMD's local rulemaking. As a result, we do not believe we need to respond to the issues raised in the attachments. As a courtesy to the commenter, however, we have summarized and responded to these comments below.

Comment 14: CBE has commented that because of the EJ concerns, Rule 1612.1 must have a better public participation process and evaluation. CBE believed it appropriate to offer community members notice and opportunity to comment on individual trades. The rule does not provide for an evaluation of the program until 2006 and should be evaluated on an annual basis.

Response 14: The rules require a biannual program review beginning in 2002 for Rule 1612.1. See also Response 4 regarding EJ concerns. The SIP-approved RECLAIM program does not provide for public notice and comment on individual trades, and we see no basis for requiring such notice and comment for Rule 1612.1 trades.

Comment 15: CBE commented that SCAQMD must incorporate technical uncertainty in the calculation of emission reduction credits. Rule 1612.1 does not incorporate technical uncertainty in its calculation protocols and allows use of notoriously inaccurate emission factors.

Response 15: Technical uncertainty is accounted for in Rule 1612.1's emissions quantification protocol even though it does not appear as a separate factor in the calculations. See also Response 11.

Comment 16: CBE commented that SCAQMD violated the California Environmental Quality Act (CEQA) in its rulemaking process for this program, citing numerous deficiencies.

Response 16: SCAQMD has certified that development of the five credit rules fully complies with CEQA. Specifically, SCAQMD made the following findings: A draft Environmental Assessment (EA) was circulated for a 30-day public review, all comments received were responded to in the Final EA, and the Final EA is adequate. SCAQMD has included the Final EA for the five credit rules in its SIP submittal. In submitting these rules to EPA, the California Air Resources Board (CARB) has concurred with this certification. SCAQMD and CARB have much greater expertise in implementing and interpreting this state law than does EPA, and we concur with their analysis.

Comment 17: The RECLAIM program has already violated California Health and Safety Code section 39616(c), which require EIPs to reduce emissions as much or more than the programs they replace. A generous estimate of actual overall reductions resulting from RECLAIM is 16% since 1993. Approving the RECLAIM amendments and associated credit rules will only exacerbate the problem.

Response 17: See Responses 1 and 2.

Comment 18: The Mitigation Fee Program and the RECLAIM AQIP violate the equivalency requirement under State Law.

Response 18: These comments relate specifically to recent amendments to Regulation 20 and are not relevant to the five credit rules. See also, Responses 1 and 2.

Comment 19: While CBE supports SCAQMD's efforts to mandate pollution control at certain power plants through submittal of compliance plans to achieve BARCT, it is unclear what the BARCT standards are for power producing facilities.

Response 19: See Response 18.

Comment 20: It is unclear what is meant by ''best available information'' which is the basis for environmental dispatch under Rule 2009.

Response 20: See Response 18.

Comment 21: CBE provided a copy of extensive comments that they made in 1994 to CARB during CARB's hearing on RECLAIM.

Response 21: These comments are not relevant to the five credit rules. See Response 1 and 2.

The next comments are summarized from a June 1, 2001 letter CBE wrote to CARB and EPA, and were attached to CBE's October 9, 2001 comment letter to EPA Region 9 regarding the five credit rules. Since CBE's August 9, 2001 letter is quite extensive and raises many of the same issues as the attachment, we believe the attachment was included only as background information and not intended as comments to our August 7, 2001 proposal. As a result, we do not believe we need to respond to the issues raised in the June 1, 2001 letter. As a courtesy to the commenter, however, we have summarized and responded to these comments below.

Comment 22: CBE commented that CARB has not determined, in accordance with California Health and Safety Code section 39616(d)(2), that Rule 1612.1 meets certain requirements of the California Clean Air Act. CBE believes that the new rules violate several provisions of state law, including equivalency under subdivision (c) of section 39616.

Response 22: We have discussed this issue with CARB. CARB provided us with the following legal analysis. CARB has much greater expertise in implementing and interpreting this state law than does EPA, and we concur with their analysis.

When an air district first adopts or revises its attainment plan to establish a market-based incentive program, such as RECLAIM in the South Coast, the district is required to meet the conditions specified in Health and Safety Code section 39616(d)(1) or (2) as applicable and to make certain findings, and CARB is required to make a determination that the conditions are met. Further, CARB must determine that the district met the conditions specified in section 39616(d) when adopting regulations to implement a market-based incentive program. SCAQMD and ARB met these obligations when the RECLAIM program was established.

These requirements do not apply to the 5 credit rules, however, because they are not establishing a new market-based incentive program or significantly altering an existing program. CBE's reading of the statute as applying to the credit rules, which do not undermine the findings and determinations made when the overarching RECLAIM program was established, is incorrect.

This does not mean that a market-based program goes without further review for compliance with the requirements of section 39616. Under section 39616(e), a district is required to

reassess its program established in accordance with section 39616 within 5 years of adoption and ratify certain of the findings made at the time of adoption within 7 years, with CARB concurrence. This process is currently underway but has not yet been completed.

Comment 23: CBE commented that the credit rules violate State law because they do not comply with CARB's methodology which requires that calculation methods for determining the amount of reductions generated take technical uncertainty into account.

Response 23: SCAQMD has determined that the credit rules are consistent with State law. In submitting these rules to EPA, CARB has concurred with this determination. SCAQMD and CARB have much greater expertise in implementing and interpreting this state law than does EPA, and we concur with their analysis. We also believe that technical uncertainty has been addressed in these rules. See Response 11.

The next set of comments are summarized from an October 10, 1999 letter CBE wrote to EPA Headquarters during the comment period for the 2001 EIP guidance, and were attached to CBE's October 9, 2001 comment letter to EPA Region 9 regarding the five credit rules. Since CBE's October 9, 2001 letter is quite extensive and raises many of the same issues, we believe the October 10, 1999 letter was included only as background information and not intended as a comment to our August 7, 2001 proposal. We also note that many of the issues in the October 10, 1999 letter are either not relevant to our August 7, 2001 proposal because they were raised in context of EPA's generic national guidance, or EPA has already responded above to the issue. As a result, we do not believe we need to respond to the issues raised in the October 10, 1999 letter. As a courtesy to the commenter, however, we have summarized the remaining relevant issues and responded to these comments below.

Comment 24: CBE comments that the EIP guidance undermines many existing technology-based rules and regulations, existing EIP policy and rules, as well as the CAA itself.

Response 24: As discussed in Response 13, the draft EIP guidance was developed to help assure consistent interpretation of the CAA where its application to detailed EIP requirements is unclear. We do not believe it is inconsistent with pre-existing federal requirements or the CAA. Ultimately, however, specific EIP rules like the five SCAQMD credit rules must comply with the CAA and implementing regulations regardless of the EIP guidance.

Comment 25: CBE commented that the public must have access to the results of the program evaluation and the public must be able to participate in the development of the reconciliation procedures.

Response 25: The five credit rules include provisions for a biannual review. The SCAQMD Board also adopted a Resolution which directed staff to include in the annual RECLAIM report, the applications and credits issued pursuant to the credit rules. Consequently, information will be available to the public on an annual basis. The five credit rules and the RECLAIM program rules and amendments include reconciliation procedures which have been subject to public notice and comment.

Comment 26: CLA commented that while they support compliance flexibility measures, they urged EPA and SCAQMD to carefully examine potential adverse localized impacts to surrounding communities since credit programs can have potential socio-economic and environmental impacts.

Response 26: The SCAQMD Governing Board adopted a Resolution on May 11, 2001 which directed SCAQMD staff to evaluate the potential for localized impacts from the use of emission reduction credits from these credit rules, and to recommend to the Governing Board mechanisms to address such localized impacts, if any. See also Response 4.

Comment 27: CLA commented that EPA and SCAQMD should provide assurance that the proposed credit rules will not preclude SIP emission reduction requirements for the maritime industry.

Response 27: The five credit rules do not preclude SCAQMD from submitting additional SIP emission reduction requirements for the maritime industry.

Comment 28: CLA commented that they supported the sunset of the credit rules prior to 2010, the year for ozone attainment, and they believe that any surplus emission reductions that remain from Rules 1631 or 1632 should be applied to the Marine Vessel SIP Control Measure or other equivalent measure for the maritime industry in the most recent EPA-approved SIP.

Response 28: Rule 1631 will end June 30, 2005. We agree that any emission reductions achieved subsequent to that time should be applied to the SIP. Rule 1632 includes a provision to evaluate, in 2010, whether the emission reductions remain surplus in the context of the most recently EPA-approved SIP. If the emission reductions are determined not to be surplus, Rule 1632 ends in 2010. If the evaluation shows that some or all of the emission reductions are surplus, Rule 1632 could continue.

Comment 29: The other commenters all supported our proposed action to fully approve the five credit rules.

Response 29: No response needed.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Administrative Requirements

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 32111, ''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 Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 16, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(282) and (c)(284)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(282) New and amended regulations for the following APCDs were submitted on May 31, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rules 1631, 1632, 1633, and 2507 adopted on May 11, 2001.

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(284) * * *

(i) * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 1612.1 adopted on March 16, 2001.

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[FR Doc. 02–2841 Filed 2–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301166A; FRL–6823–4]

RIN 2070–AC18

Sulfuryl Fluoride; Temporary Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes temporary tolerances for residues of sulfuryl fluoride and inorganic fluoride in or on walnuts and raisins. The Agency is establishing these temporary tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 to support an Experimental Use Permit (EUP) that involves testing a possible alternative to methyl bromide in the post-harvest fumigation of stored commodities. This experimental use fumigant program is being proposed as a methyl bromide alternative for the post-harvest fumigation of stored walnuts and raisins. These temporary tolerances will support a 3-year EUP effective between March 1, 2002 through March 1, 2005 and allows 18 months for treated commodities to clear commerce. The EUP will be conducted by Dow AgroSciences entirely in the state of California. The temporary tolerances expire on September 1, 2006. A detailed risk assessment for the proposed use was published in the **Federal Register** on September 5, 2001 (66 FR 46415).

DATES: This regulation is effective February 7, 2002. Objections and requests for hearings, identified by docket control number OPP–301166A, must be received by EPA on or before April 8, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301166A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6742; and e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing