

approval until these issues are fully explored and supported.

*Response #17:* The TSD and FRN listed the documents containing all of the criteria which were used in evaluating the submitted rules. It was not necessary or feasible to state explicitly in the FRN and TSD how each rule met each element contained in all of these documents. The explanation as to why the power plants were separated from the rest of the RECLAIM market and why they were required to put on controls is provided in the Staff Reports drafted by the SCAQMD for each of the subject rules and attached to the TSD as well as in the TSD itself. As stated in the TSD, the power producing facilities were separated from the rest of the RECLAIM market and trading was limited to isolate the rest of the market from RTC demands from the power producing facilities. The current SIP submittal does not require power producing facilities to install controls but does contain enforceable requirements that will assure that their emissions are reconciled with their RTC holdings. It should be noted that adopted state law does require these facilities to install controls.

The next two comments are summarized from letters CBE wrote to SCAQMD during development of five RTC generation rules and were attached to CBE's October 9, 2001 comment letter to EPA. Since CBE's October 9, 2001 letter is quite extensive and raises many of the same issues as its attachments, we believe the attachments were included only as background information and not intended as comments to our May 13, 2002 proposal. We also note that many of the issues in the attachments are not relevant to our 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 #18:* CBE stated that 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. CBE also stated that the Mitigation Fee Program and the RECLAIM AQIP violate the equivalency requirement under State Law.

*Response #18:* On February 13, 2003, Jack P. Broadbent, Director of the Air

Division for EPA Region IX, sent a letter to Catherine Witherspoon, Executive Officer of the California Air Resources Board ("CARB"), requesting assistance in responding to the above comments. Since CARB is the designated air pollution control agency for purposes of the preparation of SIPs (California Health and Safety Code section 39602) we asked CARB to advise us whether the substantive and/or procedural requirements of section 39616 apply to the promulgation of the RECLAIM revisions. Further we requested that if CARB believed that the requirements of section 39616 did apply, that CARB describe the actions taken by SCAQMD and CARB to comply with these requirements. In a letter dated April 24, 2003, from Catherine Witherspoon to Jack P. Broadbent, CARB responded to our request. CARB's April 24, 2003 letter noted that the subject rule revisions were adopted by SCAQMD and subsequently approved by CARB and submitted to EPA for incorporation into the SIP. In reviewing the SCAQMD rule revisions, CARB considered CBE's claims (which had been raised at that time) and interpreted the relevant provisions of state law. To summarize CARB's findings, they believe that the requirements of section 39616 are limited to the initial adoption of rules to implement the RECLAIM program and that review of amendments to some of the RECLAIM rules to implement necessary program adjustments are not subject to these provisions. CARB also pointed out that they reviewed the RECLAIM rule amendments substantively and are satisfied they do not undermine the SIP. For a much more detailed explanation of CARB's analysis see their April 24, 2003 letter, a copy of which can be obtained from EPA Region IX at the address listed above.

### III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(4) of the Act, EPA is finalizing a conditional approval of the submitted rules to improve the SIP. This action incorporates into the SIP both the submitted rules and the commitment to correct the identified deficiency within one year.

This conditional approval shall be treated as a disapproval if the SCAQMD fails to adopt rule revisions to correct the deficiency within the time allowed. If this rule is disapproved, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that corrects

the rule deficiency within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the SCAQMD, and EPA's final conditional approval does not prevent the local agency from enforcing them.

### IV. 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 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.*)

#### 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 sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed