(5) *Reasons for exemption.* EPA 41 is exempted from the above provisions of the PA for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Making such an accounting could result in the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting such access could cause the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive order of the President. The application of this provision could impair personnel security investigations which use properly classified information, because it is not always possible to know the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(iv) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual upon request if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Since EPA is claiming that this system of records is exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that this system of records is exempted from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in this system of records.

(v) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him or her. Since EPA is claiming that this system of records is exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that this system of records is exempt from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his or her records in this system of records. These procedures are described elsewhere in this part.

(d) *Exempt records provided by another Federal agency.* Individuals may not have access to records maintained by the EPA if such records were provided by another Federal agency which has determined by regulation that such records are subject to general exemption under 5 U.S.C. 552a(j) or specific exemption under 5 U.S.C. 552a(k). If an individual requests access to such exempt records, EPA will consult with the source agency.

(e) *Exempt records included in a nonexempt system of records.* All records obtained from a system of records which has been determined by regulation to be subject to specific exemption under 5 U.S.C. 552a(k) retain their exempt status even if such records are also included in a system of records for which a specific exemption has not been claimed.

[FR Doc. 06–45 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–CA–0015; FRL–8010–7]

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 a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on June 14, 2005 and concerns particulate matter (PM) and ammonia emissions from fluid catalytic cracking units (FCCUs) at oil refineries. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on February 3, 2006.

ADDRESSES: EPA has established docket number EPA-R09-OAR–2005-CA–0015 for this action. The index to the docket is available electronically at *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: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov.*

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

I. Proposed Action

On June 14, 2005 (70 FR 34435), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1105.1	Reduction of PM10 and Ammonia Emissions from Fluid Catalytic Cracking Units.	11/07/03	06/03/04

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

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Gregory R. McClintock, Western States Petroleum Association (WSPA); letter dated July 14, 2005 and received July 14, 2005 by electronic mail.

The comments and our responses are summarized below.

Comment #1: WSPA commented that sufficient opportunity for public comment was not provided by our June 14, 2005 proposal. WSPA requested an extension of the original 30-day public comment period and an opportunity to consult with EPA. WSPA asserted that § 6(a)(1) of Executive Order No. 12866 provides for ''the involvement of * * * those expected to be burdened by any regulation'' and a ''meaningful opportunity to comment'' of no less than 60 days.

Response #1: The application of the 60-day public comment period provision in § 6(a)(1) of Executive Order No. 12866 is not appropriate to this action because this action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. It is also not appropriate for EPA to invite consultation on a state law. The state, in this case, the SCAQMD, has the authority under California Health and Safety Code §§ 40000 and 40001 to adopt rules and regulations to achieve and maintain the federal ambient air quality standards. Furthermore, the SCAQMD satisfied the ''meaningful opportunity to comment'' intent of Executive Order 12866 during its rulemaking process. When the SCAQMD began developing Rule 1105.1 in January 2002, it ensured significant participation from industry through the establishment and meetings of the Refinery Working Group. The rule was ultimately made available to the public and other interested parties on September 2, 2003, more than 60 days in advance of the November 7, 2003 Board Hearing to adopt Rule 1105.1. WSPA has been actively litigating the regulation of oil refineries with the SCAQMD and should not have required more than the standard 30-day comment period EPA makes available for this type of rulemaking action to submit comments to us on this rule.

Comment #2: WSPA commented that Rule 1105.1 is currently being litigated in the Second District Court of Appeal for the State of California. WSPA anticipates that Rule 1105.1 will be vacated by the Court on the grounds that compliance with the rule is unachievable, that a more viable option for regulating this source category exists, and that the requirements of California Health and Safety Code §§ 40440(b)(1), 40405, 40406; Civil Code § 3531 have ultimately not been met. WSPA contends that EPA approval of Rule 1105.1 into the SIP at this time would interfere with the State Court of Appeal's jurisdiction and implicate the issues of federalism set forth in Executive Order No. 13132, thereby also requiring Agency submission of a federalism summary impact statement to the Director of the Office of Management and Budget (OMB).

Response #2: EPA believes that it is inappropriate to disapprove or delay approval of a SIP revision merely on the basis of pending state court challenges. To do so would allow parties to impede SIP development merely by initiating litigation. Alternatively, were EPA required to assess the validity of a litigant's state law claims in the SIP approval process, EPA would have to act like a state court, in effect weighing the competing claims of a state and a litigant. Therefore, EPA does not interpret CAA section 110(a)(2) to require the Agency to make such judgments in the SIP approval process, especially where the validity of those challenges turns upon issues of state law. Moreover, EPA believes that the structure of the CAA provides appropriate mechanisms for litigants to pursue their claims and appropriate remedies in the event that they are ultimately successful. See *Sierra Club* v. *Indiana-Kentucky Electric Corp.,* 716 F.2d 1145, 1153 (7th Cir. 1983) (State court invalidation of a SIP provision resulted in an unenforceable SIP provision which the state had to reenact or which EPA may use as the basis for a SIP call).

With regard to the possibility of a more viable option for regulating the FCCUs covered by Rule 1105.1, EPA is prohibited by CAA section 110(a)(2) from considering the economic or technological feasibility of the provisions of rules submitted for approval as a SIP revision. *Union Electric Co.* v. *EPA,* 427 U.S. 246, 265–66 (1976). As noted by the Supreme Court, it is the province of state and local authorities to determine whether or not to impose limits that may require technology forcing measures. EPA must assess the SIP revision on the basis of the factors set forth in CAA section 110(a)(2) which do not provide for the disapproval of a rule into a SIP based upon economic or technological infeasibility.

EPA's action does not interfere with the State Court of Appeal's jurisdiction or implicate the issues of federalism set forth in Executive Order No. 13132 because, as discussed above, this action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Federalism, as defined in § 2(a) of Executive Order No. 13132, ''is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.'' With this action, EPA is affirming the states' ''unique authorities, qualities, and abilities to meet the needs of the people'' and is deferring to the state's ''policymaking discretion'' to adopt rules and regulations to achieve and maintain the federal ambient air quality standards. This action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. See, Executive Order No. 13132 §§ 2(e) and 2(i). Agency submission of a federalism summary impact statement to the Director of OMB is, therefore, not necessary or appropriate.

Comment #3: WSPA refuted the Agency's determination that the completeness criteria in 40 CFR part 51 Appendix V have been met because § 2.1(c) of Appendix V requires that the state have ''the necessary legal authority under State law to adopt and implement the plan.'' As discussed in Comment #2, WSPA claims the state does not have the authority to adopt and implement Rule 1105.1 because it did not satisfy the California Health and Safety Code §§ 40440(b)(1), 40405, 40406; Civil Code § 3531 requirement of achievable compliance. WSPA also contends that the state submittal of Rule 1105.1 is not complete because SCAQMD failed to meet recordkeeping requirements in § 40728 of the California Health and Safety Code and other procedural requirements of the California Environmental Quality Act (CEQA).

Response #3: As stated in Responses #1 and #2 above, the SCAQMD has authority under California Health and Safety Code §§ 40000 and 40001 to adopt rules and regulations to achieve and maintain the federal ambient air quality standards and, pursuant to Agency interpretation of CAA section 110(a)(2), EPA cannot delay the SIP development process by awaiting the Second District Court of Appeal's

judgment on this issue. With their submission of Rule 1105.1, SCAQMD and CARB attested that Rule 1105.1 meets the requirements in the California Health and Safety Code and CEQA. EPA generally defers to the state and local agencies in their interpretation of state requirements. The lower Court upheld the state and local agencies' submission of Rule 1105.1 as meeting those requirements and we see no obvious reasons to question the state and local agencies' determination that Rule 1105.1 complies with the applicable state requirements.

Comment #4: WSPA postulated that implementation of the requirements contained in Rule 1105.1 would result in more frequent maintenance and shutdowns of FCCUs. WSPA, therefore, asserted that approval of Rule 1105.1 into the SIP should be considered a ''significant regulatory action'' within the meaning of § 3(f)(1) of Executive Order No. 12866 and a ''significant energy action'' within the meaning of § 4(b)(1)(ii) of Executive Order No. 13211 because the rule would interfere with the supply of gasoline and other petroleum products, increase the cost of these products, and adversely affect competition, productivity and job availability at refineries. Furthermore, as a ''significant regulatory action'' and ''significant energy action,'' EPA should submit additional information, including a ''Statement of Energy Effects,'' and obtain approval from the Office of Information and Regulatory Affairs (OIRA) pursuant to §§ 6(a)(3)(B)–(C) and 8 of Executive Order No. 12866 and § 3 of Executive Order No. 13211.

Response #4: As discussed in Response #1, this action does not impose any additional requirements beyond those imposed by state law because it merely approves state law as meeting Federal requirements. Approval of Rule 1105.1 into the SIP does not create any added Federal requirements. Executive Order Nos. 12866 and 131211, are applicable Federal agencies, not States; therefore, the requirements to submit additional documents to and obtain approval from OIRA are not germane to this action.

Comment #5: WSPA commented that Rule 1105.1 is not enforceable as asserted in our June 14, 2005 proposed rulemaking because compliance with the requirements of Rule 1105.1 are unachievable. WSPA claimed that the proposed rule failed to address what is meant by enforceable.

Response #5: The feasibility of rules submitted for approval as a SIP revision is discussed in Response #2 and is not germane to CAA enforceability requirements. EPA maintains, as stated in our proposed rulemaking, that Rule 1105.1 is enforceable and that the criteria upon which this enforceability determination were made are clearly outlined under the section entitled ''How is EPA Evaluating the Rule'' at 70 FR 34436.

Comment #6: WSPA commented that the requirements of Rule 1105.1 rely on incorrect expectations regarding the availability, efficacy, and reliability of various control technologies, including dry and wet ESPs, wet gas scrubbers, sulfur oxide reducing agents, and selective catalytic and non-catalytic reduction.

Response #6: See the discussion in Response #2 regarding the economic or technological feasibility of provisions of rules submitted for approval as a SIP revision.

III. EPA Action

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

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. section 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. section 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 March 6, 2006.

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, Ozone, Particulate Matter, Reporting and recordkeeping requirements.

Dated: December 5, 2005.

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)(331) (i)(B)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(331) * * *

(i) * * *

(B) * * *

(*2*) Rule 1105.1, adopted on November 7, 2003.

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[FR Doc. 06–56 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–CA–0016; FRL–8007–6]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on February 25, 2004 and concerns oxides of nitrogen (NO_X) emissions from stationary reciprocating internal combustion engines. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on February 3, 2006.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2005–CA–0016 for this action. The index to the docket is available electronically at *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: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov.*

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

I. Proposed Action

On February 25, 2004 (69 FR 8613), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SDCAQMD	69.4	Stationary Reciprocating Internal Combustion Engines—Reasonably Available Control Technology.	07/30/03	11/04/03

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

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period we did not receive any comments.

III. EPA Action

Our assessment that the submitted rule complies with the relevant CAA requirements has not changed. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

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, 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