ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0427; FRL-10165-02-R9]

Air Plan Approval and Limited Approval-Limited Disapproval; California; Antelope Valley Air Quality Management District; Stationary Source Permits; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an approval and a limited approval and limited disapproval of revisions to the Antelope Valley Air Quality Management District (AVAQMD or "District") portion of the California State Implementation Plan (SIP). These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under part D of title I of the Clean Air Act (CAA or "Act"). This action updates the District's portion of the California SIP with nine revised rules. Under the authority of the CAA, this action simultaneously approves local rules that regulate emission sources and directs the District to correct rule deficiencies.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2022-0427. All documents in the docket are listed on the *https://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov*, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If

you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the FOR FURTHER INFORMATION CONTACT section.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, Rules Office (AIR-3-2), U.S. Environmental Protection Agency, Region IX, (415) 947-4156, *kelly.shaheerah@epa.gov*.

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

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Proposed Action

On January 30, 2023 (88 FR 5826), the EPA proposed approval of three rules and a limited approval and limited disapproval of six rules that were submitted for incorporation into the California SIP. Table 1 shows the rules in the California SIP that will be removed or superseded by this action.

TABLE 1 – SIP RULES TO BE REMOVED OR SUPERSEDED

RULE	RULE TITLE	AMENDMENT OR ADOPTION DATE	SUBMITTAL DATE	EPA ACTION DATE	FR CITATION
Regulation II (Permits)					
Rule 206	Posting of Permit to Operate	2/21/1976	4/21/1976	11/9/1978	43 FR 52237
Rule 219	Equipment Not Requiring a Written Permit Pursuant to Regulation II	9/4/1981	10/23/1981	7/6/1982	47 FR 29231
Regulation XIII (New Source Review)					
Rule 1301	General	12/7/1995	8/28/1996	12/4/1996	61 FR 64291
Rule 1302	Definitions	12/7/1995	8/28/1996	12/4/1996	61 FR 64291
Rule 1303	Requirements	5/10/1996	8/28/1996	12/4/1996	61 FR 64291
Rule 1304	Exemptions	6/14/1996	8/28/1996	12/4/1996	61 FR 64291
Rule 1306	Emission Calculations	6/14/1996	8/28/1996	12/4/1996	61 FR 64291

RULE	RULE TITLE	AMENDMENT OR ADOPTION DATE	SUBMITTAL DATE	EPA ACTION DATE	FR CITATION
Rule 1309	Emission Reduction Credits	12/7/1995	8/28/1996	12/4/1996	61 FR 64291
Rule 1309.1	Priority Reserve	12/7/1995	8/28/1996	12/4/1996	61 FR 64291
Rule 1310	Analysis and Reporting	12/7/1995	8/28/1996	12/4/1996	61 FR 64291
Rule 1311	Power Plants	2/25/1980	4/3/1980	1/21/1981	46 FR 5965
Rule 1313	Permits to Operate	12/7/1995	8/28/1996	12/4/1996	61 FR 64291

Table 2 shows the rules that the State submitted for inclusion in the California SIP. The submitted rules listed in Table 2 would replace the current EPA-approved SIP rules that are listed in Table 1. The rule subsections contained in 1302(C)(5) and 1302(C)(7)(c) are not submitted for inclusion in the California SIP because they are requirements for regulating toxic air contaminants (TAC) and hazardous air pollutants (HAP) under District Rule 1401, "New Source Review for Toxic Air Contaminants."[1]

[1] Subsections 1302(C)(5)(d) and 1302(C)(7)(c)(iii) of Rule 1302 specifically state that subsections 1302(C)(5) and 1302(C)(7)(c) are not submitted to the EPA and are not intended to be included as part of the California SIP.

TABLE 2 – SUBMITTED RULES

RULE	RULE TITLE	ADOPTION OR AMENDMENT DATE	SUBMITTAL DATE[a]
Regulation II (Permits)			
Rule 219	Equipment not Requiring a Permit	6/15/2021	8/3/2021
Regulation XIII (New Source Review)			
Rule 1300	New Source Review General	7/20/2021	8/3/2021
Rule 1301	New Source Review Definitions	7/20/2021	8/3/2021
Rule 1302 (except 1302(C)(5) and 1302(C)(7)(c))	New Source Review Procedure	7/20/2021	8/3/2021
Rule 1303	New Source Review Requirements	7/20/2021	8/3/2021
Rule 1304	New Source Review Emissions Calculations	7/20/2021	8/3/2021
Rule 1305	New Source Review Emissions Offsets	7/20/2021	8/3/2021
Rule 1306	New Source Review for Electric Energy Generating Facilities	7/20/2021	8/3/2021
Rule 1309	Emission Reduction Credit Banking	7/20/2021	8/3/2021

[a] The submittal for Rules 219, 1300, 1301, 1302, 1303, 1304, 1305, 1306, and 1309 was transmitted to the EPA via a letter from CARB dated August 3, 2021.

Table 3 shows the previous versions of Rule 219 and other rules under Regulation XIII codified in 40 CFR 52.220 prior to July 1, 1997, that will be superseded by the submitted versions of Rule 219 as amended on June 15, 2021, and Rules 1300 through 1306 and 1309 as amended on July 20, 2021, upon the EPA's approval of these rules into the California SIP. The District was officially formed on July 1, 1997, as the Antelope Valley APCD (AVAPCD), the agency with jurisdiction over the Los Angeles County portion of the Mojave Desert Air Basin; the AVAPCD was changed to the AVAQMD on January 1, 2002. Prior to that time, the jurisdiction of the Antelope Valley area was, at different points in time, part of the Los Angeles County Air Pollution Control District (APCD), the Southern California APCD, and the South Coast AQMD.

TABLE 3 – CODIFIED RULES IN 40 CFR 52.220 PRIOR TO JULY 1, 1997

RULE	SUBMITTAL AGENCY	SUBMITTAL DATE	EPA APPROVAL DATE (FR CITATION)
Regulation II (Permits)			
Rule 11 (Exemptions)	Los Angeles County APCD	6/30/1972	9/22/1972 (37 FR 19812)
Rule 219	Southern California APCD	4/21/1976	11/9/1978 (43 FR 52237)
Rule 219	Southern California APCD	8/2/1976	11/9/1978 (43 FR 52237)
Rule 219	Los Angeles County APCD	6/6/1977	11/9/1978 (43 FR 52237)
Rule 219	South Coast AQMD	10/23/1981	7/6/1982 (47 FR 29231)
Regulation XIII (New Source Review)			
Rules 1301, 1303, 1304, 1305, 1306, 1307, 1310, 1311, and 1313	South Coast AQMD	4/3/1980	1/21/1981 (46 FR 5965)
Rules 1302 and 1308	South Coast AQMD	8/15/1980	1/21/1981 (46 FR 5965)
Rules 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1310, 1311, and 1313	Los Angeles County APCD	9/5/1980	6/9/1982 (47 FR 25013)
Rules 1301, 1302, 1309, 1309.1, 1310, and 1313, adopted on 12/7/1995; Rule 1303 adopted on 5/10/1996; and Rules 1304 and 1306 adopted on 6/14/1996.	South Coast AQMD	8/28/1996	12/4/1996 (61 FR 64291)

In our proposal, we proposed approval of Rules 219, 1300, and 1306 as authorized under section 110(k)(3) of the Act. As authorized in sections 110(k)(3) and 301(a) of the Act,[2] we proposed a limited approval and limited disapproval of Rules 1301, 1302, 1303, 1304, 1305, and 1309 because although they fulfill most of the relevant CAA requirements and strengthen the SIP, they also contain the following deficiencies, summarized below, that do not fully satisfy the relevant requirements for preconstruction review and permitting under section 110 and part D of the Act:

1. Rule 1304(C)(2)(d) allows Simultaneous Emission Reductions (SERs), which are

[2] If a portion of a plan revision meets all the applicable CAA requirements, CAA sections 110(k)(3) and 301(a) authorize the EPA to approve the plan revision in part and disapprove the plan revision in part.

emission reductions that are proposed to occur in conjunction with emission increases from a proposed project, to be calculated using a potential-to-emit (PTE)-to-PTE calculation method rather than an actuals-to-PTE calculation method for determining (1) applicability of NNSR or quantity of offsets required for a new Major Facility or a Major Modification, and (2) the amount of offsets required at a Major Facility or Modified Facility. These SERs are inconsistent with 40 CFR 51.165(a)(1)(vi)(E)(*1*) and 40 CFR 51.165(a)(3)(ii)(J), and, when used as offsets, may not be real reductions in actual emissions as required by 40 CFR 51.165(a)(3)(i) and CAA section 173(c)(1). These deficiencies make portions of Rules 1301, 1302, 1303, 1304, and 1305 not fully approvable.

2. Rule 1304(E)(2), which defines the calculation method for determining Historical Actual Emissions (HAE), contains a typographical error making the provision deficient.

3. Rules 1302(D)(6)(a)(iii), 1304(C)(4)(c), 1309(D)(3)(c), and 1309(E)(6) allow the use of contracts, but neither the District's NSR rules submitted for approval nor any of the District's other SIP-approved NSR rules define the term "contract" or provide requirements for how a contract is an enforceable mechanism that may be used in the same way as an ATC or PTO.

4. Rule 1305(C)(6) allows interprecursor trading (IPT) between ozone precursors on a case-by-case basis, which is no longer permissible.

5. The District's rules do not contain the de minimis plan requirements contained in CAA section 182(c)(6) that apply to areas classified as Severe nonattainment.[3]

Our proposal also discussed that this action would result in a more stringent SIP and is consistent with the additional substantive requirements of CAA sections 110(l) and 193, while not relaxing any existing provision contained in the SIP; and will not interfere with any applicable attainment and reasonable further progress requirements; or any other applicable CAA requirement. We also proposed that our action would not relax any pre-November 15, 1990

[3] CAA Section 182(d), which was added by the Clean Air Act Amendments of 1990, details plan submission requirements for Severe nonattainment areas and includes all the provisions under section 182(c) for Serious nonattainment areas.

requirement in the SIP, and therefore changes to the SIP resulting from this proposed action would ensure greater or equivalent emission reductions of ozone and its precursors in the District.

Finally, our proposed action included our proposed determination to approve, under 40 CFR 51.307, the District's visibility provisions for sources subject to the District's nonattainment new source review (NNSR) program. Accordingly, we also proposed to revise 40 CFR 52.281(d) to remove the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California to clarify that the FIP does not apply to the District.

The EPA's proposal and technical support document (TSD), which can be found in the docket for this action, contain more a detailed discussion of the rule deficiencies as well as a complete analysis of the District's submitted rules that form the basis for our proposed action.

II. Public Comments and EPA Responses

The public comment period on the proposal opened on January 30, 2023, the date of its publication in the *Federal Register*, and closed on March 1, 2023. During this period, the EPA received comment letters submitted by the AVAQMD, City of Lancaster, City of Palmdale, U.S. Department of Defense, Northrop Grumman Corporation, and Lockheed Martin Aeronautics Company. These comments are included in the docket for this action and are accessible at *www.regulations.gov.* In this section, we provide a summary of and response to each of these comments.

A. Comments from AVAQMD

Comment #1: The District states that portions of the EPA's proposed action are inopportune. The District states that, despite the EPA's extensive involvement in the rule development process for both the District and the Mojave Desert Air Quality Management District ("MDAQMD"), it took over a year from the time of official submission for the EPA to formulate and publish the proposed action. The District states that during this period there was no substantive communication from the EPA regarding potential additional deficiencies that had

not been identified during the development phase. The District states that the only communications received from the EPA regarding the District NSR program after the adoption of the rule amendments were requests for copies of the SIP approved versions of various SIP rules and accompanying information, most of which the District had previously provided to the EPA in the rule development process. The District states that the EPA could have communicated trivial deficiencies to the District prior to publishing the proposed action, which would have allowed the District to provide commitments to amend its rules and that such a process would have allowed issues to be narrowed to those that truly require interpretation or judicial review.

Response to Comment #1: The EPA does not read this comment as asserting that our proposed action on the submitted rules was legally or technically deficient; rather, we understand the comment to express dissatisfaction with the EPA's communication after CARB's submittal of the revised rules on August 3, 2021.

The EPA values its relationships with state, local, and tribal air agencies and strives to maintain open and transparent communications with them. Prior to our receipt of the District's submittal, the EPA, the District, and CARB committed significant resources to meeting on a bi-weekly basis, from approximately March 2020 to June 2021, for detailed discussions of the NSR program deficiencies we identified in a letter to the District dated December 19, 2019, which applied to both the District and to the MDAQMD.[4] After the conclusion of this process and following CARB's submission of the District's revised rules, the EPA identified a few additional issues not identified in our December 19, 2019 letter. EPA staff are available to continue to work with the District to address questions and concerns with revisions necessary to correct the deficiencies, with the goal of full approval of revisions to the District's rules and a fully approved NSR program.

[4] Letter from Lisa Beckham to Brad Poiriez, which the District identifies in footnote 18 of its comment letter. In March 2020, the EPA began holding bi-weekly meetings with the CARB and MDAQMD staff to discuss and resolve issues identified in the letter. In March 2021, we began to focus our efforts on the same issues contained in the AVAQMD rules, which were nearly identical to the MDAQMD's. We continued to meet until June 1, 2021.

In addition, we understand the District's reference to "commitments" to suggest that the EPA could have proposed a conditional approval under CAA section 110(k)(4) rather than proposing a limited approval and limited disapproval. As authorized under CAA sections 110(k)(3) and 301(a), we are taking action to finalize a limited approval and limited disapproval of the submitted rules that contain the deficient provisions we identified in our proposed action.

Comments #2 and #2a: The District states that the EPA's proposed rulemaking does not fully identify its existing NSR program. The District states that Table 1 in the proposed action and Table 2-2 in the accompanying Technical Support Document (TSD) are incomplete because they fail to mention SIP-approved Rules 201, "Permit to Construct," 202, "Temporary Permit to Operate," 203, "Permit to Operate," and 204, "Permit Conditions." The District points out that Rules 201, 202, 203, and 204 are currently in the SIP, and that they should have been listed in the proposed action because they are important for understanding portions of the District's NSR program. The District then requests the EPA to officially acknowledge that Rules 201, 202, 203, and 204 are part of District's NSR Program. The District also asserts that Table 2-2 in the TSD is inaccurate.

Response to Comments #2 and #2a: The purpose of Table 1 – Current SIP Rules in our proposed action is to present the current SIP-approved versions of the submitted rules that we were proposing to act upon, not to present all the NSR rules in the SIP. To the extent the title for Table 1 created confusion, we apologize. We note that TSD Table 2-2: District's NSR Rules in the Current California SIP includes the four rules identified in the District's comment regarding Table 1 (Rules 201, 202, 203, and 204). The EPA responds below to the District's specific comments regarding TSD Table 2-2 in its responses to District Comments 2b, 2c, and 2d.

Comment #2b: The District states that Rules 208, 218, 218.1, 221, and 226 should not be listed in the TSD because they are not part of the District's NSR program and requests that the EPA revise TSD Table 2-2 to remove those rules that are not directly related to NSR.

Comment #2c: The District states that Rules 213, 213.1, and 213.2 should not be listed in

the TSD because they are not applicable to the current NSR program. The District states that it would appreciate a clarification by the EPA, either in Table 2-2 of the TSD or elsewhere, that Rules 213, 213.1, and 213.2 are not a part of its NSR program because their terms were superseded by the version of Rule 1301 that the EPA approved into the SIP in 1983.

Response to Comments #2b and #2c: EPA's proposed action concerns only the rules identified in Table 2 – Submitted Rules and Table 3 – Rescinded Rules.[5] TSD Table 2-2 was provided primarily for context and background. We note that the District does not assert that the clarifications in its comment letter relate to the submitted rules or to the rules identified for rescission. We do not believe that the District's clarifications relate to the EPA's evaluation of California's requested SIP revisions. Nevertheless, we appreciate the additional information in the District's letter, which is included in the docket.

Comment #2d: The District states that the TSD does not sufficiently discuss the SIP history and thus perpetuates inaccuracies and inconsistencies. The District states that Table 2-2 in the TSD contains inaccuracies regarding the SIP history of a variety of the listed rules, especially those found in Regulation II. The District then provides an historical overview of air quality regulation in its jurisdiction. The District states that any South Coast Air Quality Management District (SCAQMD) rule actions submitted and approved as of October 15, 1982, became SIP rules for the areas outside of the South Coast Air Basin (the "non-SCAB portions") of Los Angeles County on November 18, 1983. The District states that there are four rules in Table 2-2 of the TSD that fall into this category (although it lists six: Rules 202, 206, 207, 213, 213.1, and 213.2). The District states that these rules were approved into the California SIP for SCAQMD in 1978, and that the amended regulations at 40 CFR 52.220(c) do not specify SCAQMD. The District also provides a history of the AVAQMD and amendments and rescissions of rules. The District then requests that the EPA acknowledge the SIP history detailed

[5] The information in Tables 2 and 3 of the *Federal Register* notice for our proposed action is repeated in TSD Table 3-1: AVAQMD's Submitted Rules and TSD Table 3-2: AVAQMD's Rules Requested to be Rescinded.

in Comment 2d and update the TSD for AVAQMD NSR with that information.

Response to Comment #2d: Section 2 of the EPA's TSD provides information regarding the formation of the AVAPCD, its current boundaries, air quality and current SIP-approved rules. We provided this information for context and background as relevant to our review, approval, and rescission of the identified rules in our rulemaking action. We appreciate the additional information in the District's letter, which provides an historical overview of its predecessor agencies and SIP-approved rules and is included in the docket.

Although we have noted that TSD Table 2-2 is provided for context and background, and that our action concerns only the rules identified in Tables 2 and 3 of the *Federal Register* notice for our proposed action, we would like to address the District's comment relating to Table 2-2 and Rules 202, 206, 207, 213, 213.1, and 213.2 and its comment that 40 CFR 52.220(c) does not specify SCAQMD. To the extent that the District is asserting that these rules are not part of the District's portion of the SIP and should not be reflected in Table 2-2 of the TSD, the EPA disagrees. The EPA's proposed action incorporating these rules into the SIP states that the rules, which had been adopted by the Southern California Air Pollution Control District (SoCalAPCD), applied to the (at the time) newly created SCAQMD.[6] As the EPA explained in that proposed action, California split the SoCalAPCD into four districts after it submitted the SoCalAPCD rules for SIP inclusion: SCAQMD, Los Angeles County Air Pollution Control District (APCD), Riverside County APCD, and San Bernardino APCD.[7] EPA approved the submittals for Rules 202, 206, 207, 213, 213.1, and 213.2 at 43 FR 52237 (November 9, 1978), although that approval did not apply within Antelope Valley because the desert portion of Los Angeles County

[6] 43 FR 52237 (November 9, 1978). The notice explains that the rules that CARB submitted for the SoCalAPCD SIP apply to the SCAQMD: "On April 21, August 2, and November 19, 1976 the State of California submitted to the Regional Administrator, Region IX, revisions of the Southern California Air Pollution Control District . . . regulations. On February 1, 1977 the State split the Southern California Air Pollution Control District into the South Coast Air Quality Management District in the western region and three separate APCDs formed out of the remaining parts of Los Angeles, Riverside, and San Bernardino counties in the eastern desert areas . . . The State of California resubmitted rules for these eastern areas on June 6, 1977, merely to reflect this split . . . South Coast Air Quality Management District and Los Angeles, Riverside, and San Bernardino Air Pollution Control Districts (Southeast Desert Portions) regulation II . . . will provide [the requirements to obtain a permit]."

[7] Id.

had already been split from SCAQMD and the approval of SoCalAPCD rules was to apply only within the new SCAQMD portion of the former SoCalAPCD.[8] However, the SCAQMD portion of the SIP (with certain exceptions) was extended to AVAQMD in 1982 when SCAQMD's jurisdiction was extended to include the Southeast Desert portion of Los Angeles County.[9] Regarding Rule 202, EPA approved two submittals in the rulemaking at 43 FR 52237: Rule 202(a) and (b), adopted on January 9, 1976, and submitted to the EPA on April 21, 1976; and Rule 202(c), which was adopted as an amendment on May 7, 1976, and submitted to the EPA on August 2, 1976. Thus, Rules 202, 206, 207, 213, 213.1, and 213.2 applied to the SCAQMD following EPA approval at 43 FR 52237, and the rules were extended to apply in AVAQMD when the SCAQMD's jurisdiction expanded in 1982. Except for Rule 206, which this rulemaking removes, the rules remain in the District's portion of the California SIP.

Comment #3: The District states that the TSD does not completely identify provisions of 40 CFR 52.220(c) that need to be changed. The District states that Section 3.1 of the TSD attempts to identify specific codifications contained in 40 CFR 52.220(c) that need to be changed to properly reflect the condition of the District SIP rules in relation to NSR. The District states that while the EPA identified a number of potential changes to 40 CFR 52.220(c) in TSD Table 3-3, the proposed changes are not complete or comprehensive to update the SIP. The District references a list of CFR citations in Table C of its comment letter, which is titled, "CFR Citations Which May Require Clarification." The District states that the citations presented in Table C may or may not require additional clarifications to appropriately identify the applicable SIP for the referenced rules. The District then requests that the EPA identify all provisions in 40 CFR 52.220(c) and elsewhere that need clarification and list them in an update to the TSD and in the final rulemaking action.

---

[8] 43 FR 25684, 25685 (June 14, 1978).

[9] 48 FR 52451 (November 18, 1983). The Southeast Desert portion of Los Angeles County was added to the SCAQMD on July 9, 1982. On October 15, 1982, the SCAQMD adopted the existing rules and regulations of the SCAQMD for the Southeast Desert Air Basin portion of Los Angeles County, with the exception of Rules 1102, 1102.1, 461, and Regulation III, and rescinded the existing rules and regulations of the Los Angeles County APCD, with the exception of Regulation III.

Response to Comment #3: The EPA disagrees with the District's characterization of Section 3.1 of the TSD that "USEPA attempts to identify specific codifications contained in 40 CFR 52.220(c) which need to be changed to properly reflect the condition of the AVAQMD SIP rules in relation to NSR." In fact, Section 3.1 of the TSD explains our proposal to act on CARB's specific requests to revise the California SIP in submittals dated October 30, 2001, April 22, 2020, and August 3, 2021. The EPA did not independently identify parts of the SIP that needed to be updated; rather, we proposed to take action according to CARB's requests.[10]

We acknowledge the District's request for the EPA to review Table C of its comment letter (titled, "CFR Citations Which May Require Clarification") and independently "identify all provisions in 40 CFR 52.220(c) and elsewhere which need clarification." This request appears to be a request to revise the CFR and, hence, the SIP. A public comment to a proposed rulemaking is not the correct mechanism for requesting a revision to the SIP; such a request must meet the criteria for SIP submittals, including public notice and submittal from CARB to the EPA.[11] We are available, however, to work with the District outside of this rulemaking to address these concerns.

Comment #4: The District states that the EPA's proposed rulemaking identifies deficiencies that are present in the current SIP-approved rules and does not explain why these previously approved provisions are no longer approvable. The District states that it would appreciate a more detailed explanation of the underlying provisions of the CAA that have changed to make the previously approved SIP provisions, which were adequate for SIP approval in 1996, not approvable now. The District states that it is not aware of any amendments to the CAA since 1990, therefore it requests an updated, specific analysis with appropriate citations, documentation, and rationale for the changes to EPA's interpretations that render previously approved NSR program provisions not approvable. The District states that it would appreciate a

[10] CARB is the governor's designee for submitting official revisions to the California SIP.
[11] See, *e.g.*, 40 CFR Part 51, App. V.

more detailed analysis—not mere citations of current regulations—regarding the specific changes in the EPA regulations and policy that now render previously approved provisions deficient. The District states that the TSD associated with the EPA's proposed action does not provide a sufficient explanation of the EPA's interpretation of the CAA requirements.

Response to Comment #4: We disagree with the District's comment that our proposed action does not provide sufficient explanation or analysis of the deficiencies identified. The EPA provided its rationale as to why the submitted revisions to the SIP-approved rules, while deficient, represent an overall strengthening of the SIP.[12] The EPA's citations in our proposed rulemaking and the TSD to specific provisions in the Act and its implementing regulations in 40 CFR part 51 are the basis for the EPA's disapproval of certain specified provisions in the District's revised NSR rules.

As the District notes, the EPA last approved the District's Regulation XIII into the SIP in 1996. In 2002, the EPA revised its NSR regulations at 40 CFR 51.165.[13] These revisions included the addition of 40 CFR 51.165(a)(3)(ii)(J). As we discussed in our proposed action and accompanying TSD, the District's submitted rules are inconsistent with the requirements in 40 CFR 51.165(a)(3)(ii)(J) and are therefore deficient.[14] In particular, our proposed action explains that 40 CFR 51.165(a)(3)(ii)(J) requires offsets for each major modification at a major source in an amount equal to the difference between pre-modification actual emissions and post-modification PTE.[15] Our responses to Comments 6 and 6a provide additional explanation of this issue. The EPA's interpretation of this provision is reasonable and consistent with our actions regarding other submittals of NSR rules for SIP approval.[16]

---

[12] 88 FR 5826, 5829; TSD Sections 5-8.
[13] 67 FR 80185 (December 31, 2002).
[14] In our 2002 rulemaking, we added the requirement in 40 CFR 51.165(a)(2)(ii), which states that deviations from federal definitions and requirements are generally approvable only if a state specifically demonstrates that the submitted provisions are more stringent, or at least as stringent, in all respects as the corresponding federal provisions and definitions. To date, the District has not made such a demonstration.
[15] 88 FR 5826, 5831.
[16] See, e.g., 81 FR 50339 (August 1, 2016), in which we finalized a limited approval/limited disapproval action on the Bay Area Air Quality Management District's NSR program. The Bay Area Air Quality Management District

Comment #5: The District states that neither the proposed rulemaking nor the TSD specifically discusses the interrelationship between the main portion of the District's NSR rules in Regulation XIII and Rule 219. The District states that while this is not generally identified as a deficiency, historically the EPA has asserted that Rule 219 somehow provides an "exemption" from NSR requirements. The District describes its permitting program as emissions unit-based, and distinguishes it from the federal regulatory scheme, which the District describes as facility-based. The District states that the "net result" is that while a specific emissions unit may be exempt from permitting requirements, it "will still undergo the NSR process." The District cites Rules 1301 and 1304 to support its position that its NSR program requires emissions changes to be determined both on an emissions unit by emissions unit basis and in regard to the facility as a whole, and it cites to Rule 219(B)(5) to support its position that Rule 219 requires emissions from exempt equipment to be included in NSR calculations. The District also states that while Rule 219 only exempts certain emissions units from obtaining "paper" permits, it does not exempt emissions units or an entire facility containing such units from other requirements in the District's Rulebook.

The District states that "USEPA has expressed concerns in the past" that a facility could escape NSR review if it were composed entirely of exempt equipment and explains that there are several backstops that prevent facilities that consist solely of equipment that is potentially exempt under Rule 219 from escaping review, such as actions undertaken by enforcement personnel and local land use agencies pursuant to state law. The District requests that the notation regarding the nature and effect of Rule 219 as part of its NSR program be corrected or clarified in the EPA's TSD.

Response to Comment #5: The EPA proposed to fully approve into the SIP the revised

---

subsequently revised and resubmitted its rules, which the EPA approved in the rulemaking titled: "Revisions to California State Implementation Plan; Bay Area Air Quality Management District; Stationary Sources; New Source Review," 83 FR 8822 (March 1, 2018). See also "Revision of Air Quality Implementation Plan; California; Sacramento Metropolitan Air Quality Management District; Stationary Source Permits," 78 FR 53270 (August 29, 2013).

version of Rule 219 as amended on June 15, 2021, because we have determined that it satisfies all relevant CAA requirements. We do not interpret the District's comment as an assertion that our proposed action to fully approve Rule 219 is incorrect. Section 8 and Attachment 6 of the TSD contain the EPA's evaluation of Rule 219 with respect to CAA 110(l), and Attachment 1 of the TSD contains EPA's evaluation with respect to the requirements under 40 CFR 51.160-164.[17] In Section 8 of the TSD, we wrote that the submitted version of Rule 219 "will result in a more stringent SIP and will not interfere with any applicable attainment, reasonable further progress goals, or any other applicable CAA requirement. Therefore, we can approve the submitted rules into the AVAQMD portion of the California SIP as proposed in this action under section 110(l) of the Act."[18] The information the District provided in its comment letter does not change our proposal to fully approve Rule 219.

The District's comment alludes to concerns that the EPA has expressed "in the past." Although the EPA may have expressed concerns with a previous version of Rule 219, our review of the submitted version of Rule 219 did not identify any remaining concerns and found that the rule is approvable.[19] Therefore, we do not find it necessary to address the merits of the "backstops" involving District enforcement and state laws that the District asserts would mitigate such a problem.

Comment #6: The District states that the EPA partially mischaracterizes Rule 1304(C)(2)(d) as a "potential to emit to new potential to emit after modification" calculation.

---

[17] Specifically, as we indicated in Attachment 1 of the TSD, Rule 219 is consistent with 40 CFR 51.160(e), which allows states to exclude some sources from NSR requirements (i.e., LAER and offsets), as well as public notice, by not requiring those sources to obtain a permit. There is a distinction between sources subject to NSR requirements and sources that are simply part of the District's NSR program. Even emissions from equipment that is exempt from permitting requirements must be included when making a major source determination. Rules 201 and 203 require that essentially all sources must obtain an authority to construct and a permit to operate, but Rule 219 specifies which sources do not need to obtain a permit, and therefore do not need to undergo NSR review, even if their emissions are included in determining if a source is major.

[18] 88 FR 5826; TSD, p. 39.

[19] As we discussed in section 8 of the TSD and in TSD Attachment 6, we found that the District's revisions to Rule 219 ensured consistency with CAA requirements, forming the basis for our proposal to fully approve the revised rule. The EPA expressed the concerns stated in docket item D.20, "EPA Email Comments to MDAQMD re MDAQMD Rule 219," (dated 3/28/2019), in reference to the previous, locally adopted version of MDAQMD Rule 219, which also applied to AVAQMD Rule 219. The District took adequate action when it revised the rule in 2021, which is the version EPA proposed to fully approve.

According to the District, this provision is more correctly characterized as "current fully offset allowable emissions" to "potential new emissions." The District also asserts that such fully offset allowable emissions are reflected as "fully Federally enforceable emissions limitations" on the permits for each piece of affected equipment and for the facility as a whole. The District states that the EPA is objecting to the use of SERs, which are created as part of an NSR action at a Major Facility to, in effect, "self-fund" the necessary offsetting emissions reductions by reducing emissions elsewhere in the Major Facility.

Comment #6a: The District states that the provisions of Rule 1304(C)(2)(d) are a clarified restatement of provisions that are currently SIP approved and have been in use since at least 1995. It then provides a historical overview of how the current language in the submitted Rule 1304(C)(2)(d) is derived from the rule provisions that the EPA approved in 1996, and that the only way to obtain a "Federally enforceable permit condition" would be via a prior NSR permitting action.

The District explains that its primary purpose for the 2021 NSR amendments was to address EPA's concerns, and that the amendments further clarified that SERs created from currently existing fully offset Permit Units at an existing Major Facility can only be used for changes within the same facility and cannot be banked. The District states that the "procedural flow" found in Rule 1302 and a specific limitation of Rule 1303(A)(4) ensures that such SERs would not be used to determine either BACT applicability, Major Facility status, or Major Modification status, therefore limiting the use of SERs and ensuring that there is no net increase in the amount of total emissions allowable from a particular facility that utilizes these provisions. The District states that its rules contrast with the potential use of the "De Minimis" provisions, which would result in an increase of allowable emissions of 25 tons per year (tpy) over a rolling five-year period.

The District states that it assumes the EPA approved rule language is similar to that which the EPA now finds deficient pursuant to CAA section 116, and that it is unclear why the

current submission cannot be approved considering the current SIP-approved language uses broader, more inclusive language with fewer safeguards. The District therefore requests that the EPA provide a detailed analysis of why the current submission cannot be approved as equivalent to or more stringent than the CAA requirements. In addition, the District requests guidance on exactly what type and nature of evidence the EPA considers necessary for approval.

Response to Comments #6 and #6a: The EPA does not agree with the District's statements in Comments 6 and 6a. Preliminarily, the EPA notes that Rule 1303(B) imposes offset obligations for new or modified facilities that emit or have the potential to emit above specified thresholds "as calculated pursuant to Rule 1304."[20] Rule 1304, "New Source Review Emission Calculations," sets forth "the procedures and formulas to calculate increases and decreases in emissions" to determine applicability of offset obligations and to calculate SERs, which are "reductions generated within the same facility."[21] Rule 1304(B)(1) specifies "General emission change calculations," and Rule 1304(B)(2) specifies "Net Emissions Increase Calculations." Notably, Rule 1304(B)(2)(c) provides that the net emissions increase calculation must subtract SERs "as calculated and verified pursuant to Section C below." Rule 1304(C) specifies the calculation of SERs. The EPA proposed to disapprove Rule 1304(C)(2)(d). This provision applies to modification projects at existing major sources that involve emissions units that "have been previously offset in a documented prior permitting action." Thus, Rule 1304(C)(2)(d) relates to the calculation of a net emissions increase to establish offset obligations.

The EPA's proposed action explains that Rule 1304(C)(2)(d) is deficient because, for certain projects, it allows the amount of required offsets to be calculated using a pre-project baseline using potential emissions (generally, the emissions allowed by a permit),[22] whereas the

---

[20] Rule 1303(B)(1). See also, EPA TSD, p. 18. Rule 1303(A) specifies control obligations, i.e., Best Available Control Technology.

[21] Rule 1304(A). In addition, District Rule 1304 sets forth "procedures and formulas" to calculate BACT obligations. See, District Rule 1304 (A)(1)(a)(i). See also, EPA TSD, pp. 18-19.

[22] Rule 1304(C)(2)(d)(i) states that the PTE for an emissions unit is specified in a federally enforceable emissions limitation. Therefore, in the context of this rulemaking action regarding the District's NSR program, the terms "allowable" and "potential" seem generally interchangeable.

CAA requires a pre-project baseline based on actual emissions.[23] As the EPA explained, CAA section 173(c)(1) requires the SIP to contain provisions to ensure that emission increases from new or modified major stationary sources are offset by real reductions in actual emissions. In addition, 40 CFR 51.165(a)(3)(ii)(J) requires that, for major modifications, the total quantity of increased emissions that must be offset shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

Rule 1304(C)(2)(d) is not consistent with statutory and regulatory requirements that the pre-project baseline utilize actual emissions to calculate offset obligations. Instead, for emissions from units that have been "previously offset in a documented prior permitting action," Rule 1304(C)(2)(d) allows the pre-project baseline to use the unit's potential to emit (the unit's allowable emissions) as reflected in a permit:

> "[Historic Actual Emissions] for a specific Emission Unit(s) may be equal to the Potential to Emit for that Emission Unit(s), [if] the particular Emissions Unit have [sic] been previously offset in a documented prior permitting action so long as: (i) The PTE for the specific Emissions Unit is specified in a Federally Enforceable Emissions Limitation; and (ii) The resulting Emissions Change from a calculation using this provision is a decrease or not an increase in emissions from the Emissions Unit(s) and (iii) Any excess SERs generated from a calculation using this provision are not eligible for banking pursuant to the provision [sic] of District Regulation XIV."

The District states that the EPA partially mischaracterizes Rule 1304(C)(2)(d) as allowing the use of the potential-to-potential test because the provision is more correctly characterized as "current fully offset allowable emissions" to "potential new emissions." It is true that Rule

[23] We note that District's comment includes the following incorrect statement, "In short, USEPA is objecting to the use of Simultaneous Emissions Reductions (SERs) which are created as part and parcel of an NSR action at a Major Facility to in effect 'self-fund' the necessary offsetting emissions reductions by reducing emissions elsewhere in the Major Facility." The deficiency identified by the EPA is the District's calculation methodology to determine the quantity of offsets required, which inappropriately allows for the use of reductions that occurred in the past and are not necessarily "simultaneous."

1304(C)(2)(d) allows the use of a pre-project baseline based on currently fully offset allowable emissions, because it is clear that the rule equates allowable emissions and potential to emit. However, the District's statements regarding the use of allowable emissions or potential emissions as the pre-project baseline are not relevant to the point presented in our proposed action that Rule 1304 is not consistent with federal requirements because it does not require the use of *actual* emissions as the pre-project baseline, rather than allowable emissions.[24]

Allowable emissions are generally set higher than anticipated actual emissions to allow for normal fluctuations in emissions to occur without violating the permit conditions. The use of allowable emissions as the pre-project baseline means that the difference between pre-project and post-project emissions will be smaller than a calculation applying the EPA's requirement to use actual emissions as the pre-project baseline. Therefore, the District's rule, when using this provision, is likely to under-calculate the quantity of offsets required.

The fact that under the District's rule only units that are already fully offset can use the allowable-to-potential offset quantification method does not remedy this deficiency, as fully offset units are still likely to have allowable emission limits above their actual emissions. Furthermore, the District's assertion that the allowable-to-potential methodology is only available to generate "self-funded" reductions for use as offsets also fails to remedy this problem, since federal requirements require actual emissions to be used as the baseline for offsets calculations in all instances, including those in which a facility internally generates its own emissions reductions to satisfy its offset obligations.

Similarly, the District's statement that its rule does not allow an increase in allowable emissions is irrelevant. CAA 173(c)(1) and 40 CFR 51.165(a)(3)(ii)(J) require that the quantity of offsets must be based on allowable increases above actual emissions.

Regarding the District's statement that "USEPA is objecting to the use of Simultaneous

[24] See, e.g., 40 CFR 51.165(a)(3)(ii)(J) (requiring offsets for each major modification at a major source in an amount equal to the difference between pre-modification *actual* emissions, not allowable (i.e., potential) emissions).

Emissions Reductions (SERs) which are created as part and parcel of an NSR action at a Major Facility to in effect 'self-fund' the necessary offsetting emissions reductions by reducing emissions elsewhere in the Major Facility," the EPA disagrees. This statement is inaccurate because the EPA did not categorically reject the District's use of SERs; rather, we identified the District's SERs calculation methodology as inconsistent with federal requirements.[25] As has been noted, the EPA identified as a deficiency Rule 1304(C)(2)(d), which provides that the pre-project baseline can be equal to allowable (i.e., potential to emit, or potential emissions) if the emissions unit has been "previously offset in a documented prior permitting action." Thus, the deficiency that the EPA identified is the District's use of SERs as a means to deviate from the federal requirement to use actual emissions for the pre-project baseline. Instead, Rule 1304(C)(2)(d) uses a pre-project baseline using allowable (i.e., potential) emissions for units with previously offset emissions. Moreover, the EPA's regulations at 40 CFR 51.165(a)(3)(ii)(J) plainly apply to each proposed major modification.

The District also states that SERs created from currently existing fully offset permit units at an existing major facility can only be used for changes at the same facility and cannot be banked. The fact that SERs cannot be bought and sold between facilities does not address the deficiency identified by the EPA that Rule 1304(C)(2)(d) allows the calculation of required offsets to use a baseline of allowable (i.e., potential) emissions, not the federally required baseline of actual emissions.[26]

The District provides no support for its assumption that the EPA approved similarly deficient provisions to submitted Rule 1304(C)(2)(d) into the SIP in 1996 under CAA section 116. The EPA's 1996 rulemaking approved the rules to which the District refers on the basis of CAA section 110, not section 116.[27] The District's point that the EPA approved rules with

---

[25] 88 FR 5826, 5830. We identified several District rules as not fully approvable because they do not assure compliance with federal regulations for calculation of required offsets, stemming from cross-references to Rule 1304(C)(2)(d). See, e.g., 1305(C)(2), 1303(B)(1), 1302(C)(3); and various definitions in Rule 1301.

[26] Arguably, the District allows facilities to "bank" emission reductions for their own internal future use, even if the District prohibits use of banked emission reductions between facilities.

[27] 61 FR 64291 (December 4, 1996).

similar language over a quarter century ago does not address the EPA's analysis and finding in our current rulemaking that Rule 1302(C)(2)(d) is inconsistent with CAA 173(c)(1), the definition of "net emissions increase" in 40 CFR 51.165(a)(1)(vi)(E)(*1*) and with the calculation methodology in 40 CFR 51.165(a)(3)(ii)(J). For the EPA to approve a provision that deviates from federal requirements, the District must demonstrate how the provision is more stringent than or at least as stringent as the corresponding federal requirements.[28] The District, to date, has not provided such a demonstration; we address this point further in our response to the District's Comment 6b. We respond to the District's comment on the use of SERs for BACT or general applicability purposes in our response to District Comment 6c.[29]

Comment #6b: The District argues that the EPA's statement that SERs [as defined in Rule 1302] used as offsets may not be based on real or actual emission reductions as required by CAA section 173(c)(1) does not consider that the actual reduction in emissions have already occurred as part of a previously offset action and that the use of SERs derived from such action ensures the allowable emissions from a particular facility would not increase without additional offsets being required. The District states that that the EPA also ignores the overall structure of its NSR program, which is specifically designed to obtain BACT on more equipment and offsets in more situations than is required under the CAA.

The District argues that the EPA's interpretation of the offset requirement is an issue of fundamental fairness in implementation because a facility would in effect be required to offset the exact same amount of allowable emissions each time it needed to upgrade, replace, or otherwise modify its equipment processes. The District provides a hypothetical example to demonstrate that a facility that had previously offset emissions would never have the ability to use those actual reductions that it previously obtained and purchased under the EPA's interpretation of offsets requirements. The District also states that the facility would have to

---

[28] 40 CFR 51.165(a)(2)(ii).

[29] Likewise, we respond to the District's assertion regarding the De Minimis rule at CAA section 182(c)(6) in our response to the District's Comments 9b and 10.

provide extra offsetting emissions reductions to regain its previously allowed and permitted emissions.

The District then states that regardless of whether past emissions reductions are technically "paper reductions," the District and its predecessor agencies have been using the formulation in the SIP approved NSR rules in one form or another since at least 1995, although more likely since the early 1980s. The District states that over that period of time the number of NAAQS exceedances has declined and so has the amount of Major Facility and overall stationary source emissions, despite significant increases in both economic activity and District population. The District argues that such a decrease would not have occurred if the NSR program was based on paper reductions.

The District requests that the EPA discuss why it considers the taking of previously obtained and purchased allowable emissions limits without additional compensation to be allowable under the CAA and a discussion as to whether such an effective taking is Constitutional. The District states that it would appreciate additional discussion on why the EPA considers actual decreases in the emissions inventory to be inadequate to show that the District's NSR program is not based upon "paper reductions."

Response to Comment #6b: The EPA disagrees with the District's comment. The District first argues that actual emissions reductions occur "as part of the previously offset action and that the use of SERs derived from such action ensures that the allowable emissions from a particular facility would not increase without additional offsets being required." As we explained in our response to District Comments 6 and 6a, the EPA's regulations at 40 CFR 51.165(a)(3)(ii)(J) apply to each proposed major modification. The fact that certain past emissions increases were offset does not justify not requiring offsets for emissions increases from the new project. In addition, the District's comment appears to assert that offsets used for a previous permitting action are available for offsetting increases in actual emissions associated with future

modifications. The Clean Air Act[30] and EPA's NSR regulations do not allow facilities to use the same emissions reductions more than once; after a facility relies upon specific emissions reductions for an NNSR permit action, the reductions are no longer surplus and cannot be used again in a future NNSR permit action.[31] Also, the District's use of allowable emissions as the metric for whether there has been an emissions increase is inconsistent with federal requirements. Typically, allowable emissions limits are set higher than anticipated actual emissions to allow for normal variations in a facility's actual emissions without violating the emissions limit in the permit. While a proposed project may not result in a change to a facility's allowable emissions limit, it may increase actual emissions. An increase in actual emissions must be offset, as required under CAA section 173(c)(1).

The District asserts that "the overall structure of the AVAQMD NSR program . . . is specifically designed to obtain BACT on more equipment as well as offsets in more situations than is required by the [federal] CAA." The District, however, provides no demonstration to support this claim, nor does it provide any basis on which the EPA could find that its NSR program ensures equivalency with federal offset requirements.[32] Similarly, the references in the District's comment letter to its Staff Report are not sufficient to demonstrate that its NSR program offsets emission increases in a manner that is at least as stringent as federal requirements. For example, Table 4 of the Staff Report compares BACT and offset requirements, but the Table does not demonstrate how implementation of the District's NSR program is imposing an equivalent quantity of offsets.[33] In addition, the last row of Table 4 states that offsets are required for significant modifications at existing major facilities, but it does not address the difference between the District's program and the federal regulations in calculating the necessary quantity of offsets for such projects.

---

[30] CAA 173(a)(1)(A) and 173(c).
[31] 40 CFR 51.165(a)(3)(ii)(G).
[32] See 40 CFR 51.165(a)(1), 51.165(a)(2)(ii).
[33] AVAQMD Staff Report pp. 40-42.

The District provides a hypothetical example referencing a scenario in its NSR Final Staff Report to explain the difference in the quantities of offsets required under its program compared to the federal program. The District's example, however, does not include key components of the federal program—for example, whether the project constitutes a major modification under 40 CFR 51.165(a)(1)(v)(A). Under the federal requirements, after determining that a project is a major modification, the facility would need to provide offsets for the difference between the pre-modification actual emissions and the post-modification potential emissions, as those terms are defined in 40 CFR 51.165. Because the District's hypothetical example only discusses quantities of allowable emissions, it is not possible to determine the quantity of emissions offsets the facility would need to provide. As noted above, however, the District's example reveals the inconsistencies of its approach and federal NSR requirements: (i) offsets of past emissions increases do not satisfy the offset obligations for increases in actual emissions for a new project; and (ii) reductions used to offset emissions increases in the past cannot be re-used to offset increases in actual emissions in future permitting actions.

A real-world example that illustrates how the District's rules are less stringent than federal requirements involves a permit application submitted to the MDAQMD to upgrade three existing natural gas-fired combustion turbines at a power plant. Although this example occurred in the MDAQMD, the implicated MDAQMD rules are identical to the District's and therefore this example is helpful to explain how the District's rules could result in a less stringent outcome than federal law requires.[34] MDAQMD's analysis of the project presents the facility's actual emissions of NO_X in the five-year period from 2016 to 2020 as ranging from 83.6 tpy to 103.9 tpy.[35] MDAQMD's analysis also presents the "pre-modification PTE" of NO_X as 205 tpy.

[34] It is also the EPA's understanding that there is an overlap in the administration and management of AVAQMD and MDAQMD, which increases the likelihood that the Districts would share the same interpretation of identical rule text.

[35] MDAQMD, "Preliminary Determination/Decision – Statement of Basis for Minor Modification to and Renewal of FOP Number: 104701849 For: High Desert Power Project, LLC." December 21, 2022, p. A-52 (PDF p. 72), Table 9.

MDAQMD's analysis states that the "post-modification PTE" of NO_X is 204.5 tpy.[36] Per the EPA's requirements, the required quantity of offsets for this project would be approximately 131 tpy (204.5 tpy minus the highest actual emissions rate of 103.9 tpy, multiplied by the offset ratio of 1.3 for Severe nonattainment areas, as required under CAA section 182(d)(2)). MDAQMD, however, only compared pre- and post-project allowable (i.e., potential) emissions; therefore, it determined that no offsets were required for the project because its analysis indicated that the project would result in a 0.55 tpy decrease in emissions.[37] As the AVAQMD regulations also provide for comparing only pre- and post-project allowable (i.e., potential) emissions, they also would lead to a similar result – that no offsets would be required.

The District also asserts that the EPA previously approved the provision we are now finding to be deficient and that, since 1995, when this provision came into active use, the number and extent of NAAQS exceedances has declined. The District also asserts that the decline in emissions could not have occurred if its NSR program was not achieving reductions at least equivalent to those that would occur if the District followed the requirements of the CAA. We do not agree with this comment. NSR programs primarily regulate construction and modification of stationary sources, and improvements in air quality can and do result from regulation of existing stationary sources (e.g., RACT, RACM and BACM requirements) as well as from regulation of mobile sources such as passenger vehicles and trucks, and non-road engines such as diesel engines used in agriculture and construction. The EPA also notes that because the District is currently classified as Severe nonattainment for the 2008 and 2015 ozone NAAQS, the CAA requires the District to implement rules consistent with the federal nonattainment NSR

---

[36] MDAQMD, "Preliminary Determination/Decision – Statement of Basis for Minor Modification to and Renewal of FOP Number: 104701849 For: High Desert Power Project, LLC." December 21, 2022, p. A-54 (PDF p. 74), Table 14.

[37] See also, Letter dated June 16, 2022, from Jon Boyer, Director, Environmental, Health, and Safety, Middle River Power, to Lisa Beckham, EPA Region IX, Subject: "Prevention of Significant Deterioration (PSD) Applicability Analysis for Turbine Upgrades at the High Desert Power Project (Revised)," ("HDPP PSD Analysis"). The same modification was analyzed under the federal PSD program, which uses baseline actual emissions to projected actual emissions methodology for determining applicability of the federal NNSR program. The submitted PSD analysis shows that the project will result in an increase in actual emissions. For NO_2, projected actual emissions would be 35.25 tpy greater than baseline actual emissions. HDPP PSD Analysis, Table 7, p. 8.

requirements at CAA section 173 and 40 CFR 51.165.

Comment #6c: The District states that the EPA's identification of Rules 1301(MM), 1301(UU), 1301(RR), 1301(TT), and 1304(B)(2) reflects a misunderstanding of the overall structure of the District's NSR regulation. The District states that the EPA assumes that the District's use of previously offset SERs could potentially allow a new or modified facility to escape being categorized as a "Major Facility" or a "Major Modification."

The District states that the EPA ignores the existence of Rule 1302, which "very clearly sets out a flow for analysis in which one step occurs after another in sequence as indicated in the Final NSR Staff Report." The District explains that the first step in the sequence is to determine the "Emissions Change" under Rule 1302(C)(1) on both an emissions unit and facility wide basis using Rule 1304(B)(1), noting no SERs are used in that calculation. The District states that the next steps involve the determination of whether a particular change is indeed a "Modification." The District states that the EPA also conveniently ignores the provisions of Rule 1303(A)(4), which excludes the use of SERs in determining emissions increases for the purpose of applying BACT.

The District admits that Rule 1304(C)(2)(d) could be interpreted incorrectly "without the procedural sequence that Rule 1302 sets forth." The District asserts that these provisions at issue have been in active use since 1996 with demonstrable results in overall air quality. The District states that, despite its assertion of the adequacy of the submitted provisions, it would appreciate guidance from the EPA regarding methods to clarify that SERs derived from previously fully offset activities can be used only to reduce the amount of offsets required and not for any other purpose.

Response to Comment #6c: The EPA disagrees with the District's assertions that the EPA's proposed disapproval of Rule 1301's definitions for "Major Modification," "Modification (Modified)," "Net Emissions Increase," and "Significant" is incorrect. We note that Rule 1301 defines the terms "Major Modification" and "Modification (Modified)" using the term "Net

Emissions Increase," and, as explained in our proposed action, Rule 1301(UU) defines the term "Net Emissions Increase" as an emission increase calculated per Rule 1304(B)(2) that exceeds zero.[38] Rule 1304(B)(2) prescribes the calculation methodologies for net emissions increases, and provides that net emissions increases must subtract SERs "as calculated and verified pursuant to Section C below."[39] As noted in our proposed action and in our response to Comments 6 and 6a, Rule 1304(C)(2)(d) allows permit applicants to calculate a net emissions increase using allowable (i.e., potential) emissions as the pre-project baseline, rather than actual emissions, as required by the EPA's regulations.[40] As we have explained in our response to Comments 6 and 6a, the District's approach is less stringent than federal requirements because actual emissions are almost always lower than allowable (i.e., potential) emissions. Therefore, an evaluation of a net emissions increase (which is essentially a comparison of pre-project and post-project emissions) that uses actual emissions (as required by the EPA's regulations) will show a higher net emissions increase than a calculation that uses allowable (i.e., potential) emissions as the pre-project baseline.

We further note that Rule 1303, "New Source Review Requirements," sets forth Best Available Control Technology (BACT) requirements[41] at subsection (A), and subsections (A)(2) and (A)(3) impose BACT requirements through the use of the term "Modification (Modified)," defined at Rule 1301(RR).[42] As we explained in our proposed action, Rule 1301(RR) defines "Modified" in terms of whether a project will "result in a Net Emission Increase [sic]."[43] As a result, a project that does not result in a "Net Emission Increase" will not meet the criteria for "Modified." Therefore, projects can potentially avoid the applicability of the BACT requirement because Rule 1303 uses the term "Modified" and, indirectly, the term "Net Emission Increase,"

---

[38] 88 FR 5826, 5830.
[39] Rule 1304(B)(2)(c).
[40] 40 CFR 51.165(a)(2).
[41] The District's definition of Best Available Control Technology in Rule 1301(K) is consistent with the federal definition of "lowest achievable emission rate" in CAA section 171(3) and 40 CFR 51.165(a)(1)(xiii).
[42] Rule 1303(A)(2) and (A)(3) use the term "Modified Permit Unit," Rule 1301 separately defines the terms "Modification (Modified)" at subsection (RR) and "Permit Unit" at subsection (DDD).
[43] 88 FR 5826, 5830.

to impose this requirement.

Similarly, Rule 1303(B)(2) imposes offset requirements using the term "Major Modification," which is defined at Rule 1301(MM). Rule 1301(MM) defines "Major Modification" using the term "Net Emissions Increase."[44] As a result, a project that does not result in a "Net Emissions Increase" will not meet the criteria for a "Major Modification" and therefore can potentially avoid the applicability of offset requirements because Rule 1303 uses the term "Major Modification" and, indirectly, the term "Net Emissions Increase," to impose this obligation.

The District states, "the existence of Rule 1302 . . . very clearly sets out a flow for analysis in which one step occurs after another in sequence . . . first you determine 'Emissions Change' under 1302(C)(1) on both an emissions unit and facility wide basis using 1304(B)(1) . . . No SERs are used in this calculation." The EPA does not agree with these statements. Rule 1302(C)(1) does not specifically reference Rule 1304(B)(1) – it references, more generally, Rules 1304 and 1700.[45] This point is significant because Rule 1302(C)(1)'s general cross-reference to Rule 1304 encompasses not just Rule 1304(B)(1), which might be helpful, but also the deficient provisions of Rule 1304(C)(2)(d), which, as explained above, calculate SERs using a pre-project baseline of allowable (i.e., potential) emissions, which results in improper calculations of net emissions increases.

The District, in its comment letter, "admits that the provisions as expressed in 1304(C)(2)(d) could, in the abstract and absent the procedural sequence set forth in 1302, potentially be interpreted incorrectly." The EPA does not agree that Rule 1302 contains a "procedural sequence." We also do not find any such sequence in Rule 1304. Rule 1304 identifies several different types of emissions calculations but does not specify an analytical

[44] Rule 1301(MM) refers to a "Significant Net Emissions Increase"; Rule 1301 separately defines "Significant" at 1301(TTT) and "Net Emissions Increase" at 1301(UU).
[45] Rule 1302(C)(1)(a) states: "The APCO shall analyze the application to determine the specific pollutants, amount, and change (if any) in emissions pursuant to the provisions of District Rules 1304 and 1700."

framework for their use.

The District's comment also repeatedly refers to its Staff Report. In general, references to non-regulatory sources can be helpful to explain regulatory text; however, the District's reliance on its Staff Report in this instance is not sufficient to correct the fact that the rules fail to ensure proper analysis and implementation of federal requirements.

Therefore, Rule 1302's broad cross reference to Rule 1304 is insufficient to establish a sequence or an "analysis flow" such as that asserted by the District. The ambiguity in the District's rules means that they do not ensure a proper analysis of emissions changes, such as, for example, correctly evaluating whether a project will result in an "Emissions Change" before evaluating whether it will result in a "Net Emissions Increase." Such sequence is essential to correctly identifying whether a project would result in a net emissions increase under 40 CFR 51.165(a)(1)(vi), which the District currently uses as a basis for determining whether a project is a "Major Modification."

In reviewing SIP submissions, the EPA must ensure that the plain language of the rule under review is clear and unambiguous. In a September 23, 1987 memorandum, the "Potter memo," the EPA stated its criteria regarding the enforceability of SIPs and SIP revisions.[46] The Potter memo states that SIP rules must be clear in terms of their applicability, and that "[v]ague, poorly defined rules must become a thing of the past."[47] It also states that "SIP revisions should be written clearly, with explicit language to implement their intent. The plain language of all rules . . . should be complete, clear, and consistent with the intended purpose of the rules."[48] The EPA can only approve rule language that is clear on its face, and the sequence the District uses for determining emissions changes and net emissions increases is not sufficiently clear. The clarification in the Staff Report cannot supplant vague rule language. The District makes the

[46] Memorandum dated September 23, 1987, from J. Craig Potter, Assistant Administrator for Air and Radiation, to EPA Regional Administrators and Regional Counsels, Regions I-X, "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency."
[47] Id. at 3.
[48] Id. at 4.

statement that it has been using the provisions at issue "since at least 1996 with corresponding demonstrable results in improving air quality." Even if air quality improved during this period, the rules must be clarified to ensure they are interpreted properly. It is speculative to assume that any air quality improvements occurred as a result of the way the rules are currently written.

Additionally, the District's comment letter states that "USEPA also conveniently ignores the provisions of 1303(A)(4) which excludes the use of SERs in determining emissions increases for purpose [sic] of applying BACT." Rule 1303(A)(4) includes an appropriately specific cross-reference to Rule 1304(B)(1), regarding "General Emissions Change Calculations." Rule 1304(B)(1) provides for proper calculation of a project's emissions changes. However, the BACT requirement is also implemented by Rule 1303(A)(2) and (A)(3), which, as described above, use the term "Modified," which is problematically defined by Rule 1301(RR), specifically because of its cross-reference to the term "Net Emissions Increase," which is in turn deficient because of its cross reference to Rule 1304's calculation methodologies, including Rule 1304(C)(2)(d). As we described in our response to the District's Comment 6b, MDAQMD found that a project in its jurisdiction did not trigger BACT because there was no net emissions increase and therefore the facility was not "Modified" as defined in Rule 1301(RR). It appears that the MDAQMD used the identical SERs-related provisions of MDAQMD Rule 1304(C)(2)(d) to calculate "Net Emission Increase" to conclude that the project was not "Modified" and as a result it did not require BACT.[49] We note that such a conclusion appears inconsistent with MDAQMD Rule 1303(A)(4), but apparently resulted from the ambiguities in Rules 1301, 1302, 1303, and 1304 described above. Even though the project occurred in the MDAQMD jurisdiction, the identical rule provisions mean that it is a useful example to explain

[49] The District's analysis of the application for this project states: "The permitting action is classified as an NSR Modification as defined in Rule 1301(NN). As there are no net emissions increases associated with NOx, VOC, or PM10, the emissions unit and the facility are **not** Modified as defined in Rule 1301 with respect to those pollutants and current BACT is not triggered." (Emphasis in original.) MDAQMD, "Preliminary Determination/Decision – Statement of Basis for Minor Modification to and Renewal of FOP Number: 104701849 For: High Desert Power Project, LLC." December 21, 2022, p. 8. We note that the District makes two logically inconsistent statements in its analysis of the project: first, that the project is an NSR Modification under Rule 1301(NN), and second, that the project is not Modified as defined in Rule 1301(NN).

the rule deficiencies in AVAQMD. Under both AVAQMD's rules and MDAQMD's, it is difficult to envision a scenario in which a "fully offset" emissions unit, using the District's terminology, would ever need to install BACT or obtain offsets as long as the facility does not increase its allowable emissions. Therefore, we confirm the determinations in our proposed action that the definitions of "Net Emissions Increase" in Rule 1301(UU) and all related provisions in Rule 1301(MM), 1301(RR), and 1301(TTT), as well as 1304(B)(2), are deficient.

Comment #6d: With regard to the EPA's finding that "SERs used to determine quantity of offsets required are not based on actual emissions as required in 40 CFR 51.165(a)(3)(ii)(J)," the District repeats that its NSR regulation is designed to ensure that the emissions reductions achieved from each modified emissions unit, and thus from any facility containing such emissions units, are greater than those required by the CAA by requiring BACT and offsets in more cases and on a greater number of emissions units than the CAA requires. The District states that its NSR program is also designed to meet the California Clean Air Act requirement mandating that stationary source control programs developed by a district with moderate or greater ozone pollution achieve "no net increase in emissions of nonattainment pollutants or their precursors from new or modified stationary sources which emit or have the potential to emit 25 tons per year or more of nonattainment pollutants or their precursors," which ensure that emissions at a particular facility remain the same or decrease over time. The District states that this is in direct contrast to the EPA's "De Minimis" provisions, which could result in up to a 25 tpy increase in pollutants from each Major Facility over every rolling five-year period. The District states that it has provided clear and convincing evidence in its Staff Report and elsewhere that its NSR program requires BACT and offsets in a number of situations where the CAA would not require them, resulting in a more stringent set of requirements overall. The District then requests specific, detailed guidance regarding what type and nature of additional evidence, if any, the EPA would consider appropriate to show equivalent stringency to the CAA requirements.

Response to Comment #6d: The EPA disagrees with the District's comment. First, as we explained in our response to the District's Comment 6b, the District provides no demonstration to support its claim that its program is more stringent than required by the federal NSR regulations, nor does it provide any basis on which the EPA could find that its NSR program ensures equivalency with federal offset requirements. Similarly, the references in the District's comment letter to its Staff Report are not sufficient to demonstrate that its NSR program offsets emissions increases in a manner that is at least equivalent to federal requirements. As to the District's assertion that its NSR rules are designed to meet the California Clean Air Act "no net increase" requirement: even if the District's program satisfies the California Clean Air Act, it must also satisfy federal air pollution control requirements under the federal CAA and its implementing regulations; satisfaction of state law requirements does not justify noncompliance with federal requirements. We provide additional explanation on the California "no net increase" requirement and federal offsetting requirements in our response to District comments 9b and 10. Also, as we described in our response to the District's Comment 6b, MDAQMD's determination that the project did not require offsets despite a projected actual emissions increase of 35 tpy NO_X under the PSD program, supports our finding that the District's program, which implements the same offsetting rules as MDAQMD, is less stringent than the federal requirements. We respond to the District's assertion regarding the De Minimis provisions at CAA section 182(c)(6) in our response to the District's Comment 9b.

Comment #7: Regarding the District's use of the word "proceed" in the definition of "Historic Actual Emissions," which the EPA identified as a deficiency, the District agrees that the deficiency is probably an overlooked typographical error, but that it has been in the rule for several iterations, dating back to 1996. The District states that it could have provided to the EPA a commitment to correct this deficiency prior to the publication of the EPA's action if the EPA had provided prior notification of the issue. The District states that it would appreciate specific guidance from the EPA regarding whether a commitment to modify the deficient provision

would be appropriate at this time.

Response to Comment #7: The District does not appear to disagree with the EPA's proposed determination that this issue is a deficiency; rather, the District appears to take issue with the manner in which the EPA provided notification of it. The EPA appreciates the coordination and cooperation demonstrated over the period of joint work by our agencies to improve the District's NSR rules. We remain available to discuss revisions necessary to address the deficiencies with the goal to full approval of revisions to the District's rules and a fully approved NSR program. The District may address this deficiency, along with all other identified deficiencies, in its next revised SIP submittal of its NSR program rules.

Comment #8: The District comments that the EPA failed to sufficiently communicate a deficiency identified in our proposed action, specifically, that Rules 1302 and 1304 allow for the interchangeable use of the terms "contract" and "permit." The District states that, had the EPA communicated this deficiency, the District could have provided assurances to the EPA to remove the deficiency. The District states that it can and will be able to provide a commitment to modify the deficient provisions in a subsequent local action, but it requests specific guidance from the EPA on whether it is appropriate to provide the EPA a commitment to modify at this time.

Response to Comment #8: We do not interpret the District's comment to assert a legal or technical basis that our proposed action to disapprove this rule is incorrect. The District states that the term "contract" was most likely inadvertently retained and that it can commit to modify the specific provisions to address the issue. We appreciate the District's willingness to address this deficiency. It is not necessary for the District to provide additional commitments. Following this final action, the EPA remains available to discuss necessary revisions, with the goal of full approval of revisions to the District's rules and a fully approved NSR program.

Comment #9a ("Interprecursor Trading"): This comment concerns the use of interprecursor trading, which is provided for in Rule 1305(C)(6). The District first states that the EPA is concerned that a court decision and subsequent change to 40 CFR 51.165(a)(11) make

interprecursor trading impermissible. The District notes that it revised Regulation XIII (including Rule 1305) after the court decision but before the EPA revised 40 CFR 51.165(a)(11). The District states that it is unclear whether the revision to 40 CFR 51.165(a)(11) has been challenged and observes that the EPA could have chosen to revise the provision differently. The District states that the EPA did not provide any indication in the TSD on the current status of this particular regulatory provision other than a citation. The District references a footnote as providing sufficient warning and requiring compliance with the applicable provisions to ensure that interprecursor trading among ozone precursors does not occur in a subsequent NSR action. The District states that prompt communication on the EPA's part would have obliviated [sic] the need for this comment as the District could have committed to clarifying the deficient provision in a subsequent rulemaking. The District then requests specific guidance from the EPA regarding whether the provision of a commitment of modify the deficient provision would be appropriate at this time.

Response to Comment #9a ("Interprecursor Trading"): To the extent the District's comment might be read as asserting that the EPA's proposed limited approval/limited disapproval of Rule 1305 is incorrect, the EPA does not agree. As the District acknowledges in its comment, on January 29, 2021, the D.C. Circuit Court of Appeals issued a decision in *Sierra Club v. USEPA,* that vacated an EPA regulation that allowed the use of reductions of an ozone precursor to offset increases in a different ozone precursor, i.e., "interprecursor trading."[50] On July 19, 2021, the EPA removed the ozone interprecursor trading provisions in 40 CFR 51.165(a)(11).[51]

Rule 1305(C)(6) allows for the use of interprecursor trading. This fact is not changed by a footnote in the rule that acknowledges the January 2021 court decision without clearly

[50] See, *Sierra Club v. EPA*, 21 F.4th 815, 819-823 (D.C. Cir. 2021).
[51] 86 FR 37918 (July 19, 2021).

prohibiting the use of interprecursor trading to satisfy offset obligations.[52] To the extent the District is suggesting that the timing of the EPA's revisions to 40 CFR 51.165(a)(11) or the possibility of subsequent legal challenges to those revisions somehow affects the EPA's conclusion that Rule 1305(C)(6) is not consistent with federal law, we disagree. Therefore, the EPA's proposed limited approval/limited disapproval of Rule 1305 is appropriate. Following this final action, the EPA remains available to discuss necessary revisions, with the goal of full approval of revisions to the District's rules and a fully approved NSR program.

Comment #9b ("De Minimis Rule"): The District summarizes the EPA's proposed action as asserting that CAA section 182(c)(6) "mandates the inclusion of a so called 'De Minimis' provision" and also as appearing to assert that CAA 182(c)(6) overrides the District's ability to implement rules that are more stringent than the requirements of the CAA pursuant to CAA section 116. The District states that the SIP-approved version of its NSR program does not contain a "De Minimis" provision primarily due to the requirement in the California Health and Safety Code section 40918(a) of "no net increase in emissions of nonattainment pollutants and their precursors." The District asserts that the EPA did not bring up this issue during the rule development period. The District states that the inclusion of the "de minimis" provision, as required under CAA section 182, would allow major facilities to increase their actual emissions without providing offsets, increasing NO_X and VOC emissions by as much as 100 tons per year, as it results in "a complete exemption from Offsets and BACT requirements." It then asserts that incorporating the De Minimis provision would weaken its NSR program, which would violate CAA section 110(l), California Health and Safety Code section 40918(a)(1), and the Protect California Air Act of 2003, which it states, "prohibits local air districts from amending or revising its New Source Review rules to be less stringent than those in effect on 12/30/2002." The District also states that, despite its assertion of the adequacy of the current submissions, it

[52] The footnote attached to Rule 1305 states: "Use of this section subject to the ruling in Sierra Club v. USEAP [sic] 985 F.3d 1055 (D.C. Cir, 2021) and subsequent guidance by USEPA."

requests specific guidance regarding the type and nature of evidence the EPA would consider appropriate to show greater stringency of the District's NSR program than that provided by the "de minimis" provision.

Response to Comment #9b ("De Minimis Rule"): The EPA does not agree with the comment. CAA section 182(c)(6) ("the De Minimis Rule") specifies a mandatory requirement for state NSR programs in nonattainment areas classified as Serious and above. It requires such areas to evaluate whether a particular physical change or change in the method of operation is a major modification by considering net emissions increases from that change and all other net emissions increases during the preceding five calendar years. If the total of all such emission increases is greater than 25 tons, the particular change is subject to the area's SIP-approved NNSR program.[53]

The District does not dispute the EPA's determination that the District's NSR program does not include provisions specified in CAA section 182(c)(6).[54] Instead, the District asserts that the inclusion of language to satisfy the De Minimis Rule provision would result in emissions increases at major facilities, possibly totaling as much as 100 tons each of NO_X and VOC over a five-year period without requiring offsets. This assertion, however, reflects the District's misinterpretation of CAA 182(c)(6). CAA section 182(c)(6) requires NNSR programs in nonattainment areas to require facilities to aggregate project emissions over a rolling five-year period to ensure adequate regulatory review of NSR requirements such as those for control technologies and offsets. Contrary to the District's assertions, CAA section 182(c)(6) does not allow facilities to increase actual emissions by 25 tons without offsetting them.

---

[53] The CAA section 182(c)(6) "De Minimis Rule" provides: "The new source review provisions under this part shall ensure that increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall *not* be considered de minimis for purposes of determining the applicability of the permit requirements established by this chapter unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred."

[54] The District also concedes that it revised Rule 1303 to remove a provision that previously provided such assurance.

Furthermore, the District does not explain how the De Minimis Rule conflicts with either the "no net increase" requirement in California Health and Safety Code section 40918(a) or the Protect California Air Act of 2003. The District's comment does not change the EPA's understanding that the De Minimis Rule operates independently of these requirements, and therefore the District's implementation of it would not weaken the District's current NNSR program. As the District's rules are currently written, BACT requirements apply when an emission unit has an emission increase or PTE of greater than 4.56 tpy (25 lb/day) (Rule 1303(A)(1) and (2)), or when the emission increase or PTE of all emission units exceed 25 tpy (Rule 1303(A)(3)). For example, a new facility with five emission units, each with a PTE of 4 tpy, would not be subject to BACT requirements under state or federal NSR requirements. However, if during the next 5 years, the source proposed to add three additional emission units, each with a PTE of 4 tpy, BACT would still not be triggered under the current rule, since the state 4.56 tpy emission unit and the federal 25 tpy project thresholds have not been exceeded. However, under the "De Minimis" requirements, the new project would be considered a major modification, with an aggregated emission increase of 32 tpy, and therefore, trigger both BACT and offset requirements for the current project. This is because the aggregated emissions from the two projects occuring within a 5-year time frame exceed the 25 tpy De Minimis Rule threshold. The District's rules fail to ensure that such a scenario is not treated as de minimis, as CAA section 182(c)(6) requires. The federal De Minimis Rule prevents a series of smaller projects, with emissions equivalent to the major modification threshold, from avoiding the major modification requirements of BACT and offsets. California law does not ensure conformity with the De Minimis Rule; therefore, the District's NSR program must include provisions to ensure compliance with it. The District's assertion that the De Minimis rule would result in a complete exemption from offsets and BACT requirements is not correct—implementation of the requirements of the De Minimis Rule would ensure that more projects are subject to NNSR requirements, and, in turn, procure offsets and install BACT, consistent with federal law.

The District asserts that its submitted rules would be more stringent than implementing the De Minimis Rule and other aspects of EPA's NNSR requirements and seeks guidance from the EPA on how to make this demonstration. In general, to make a demonstration that a program is at least as stringent as federal NNSR program requirements, the District would need to demonstrate that the requirements of its rule would trigger LAER and offsets requirements in all cases that would trigger these same requirements pursuant to the provisions of CAA section 182(c)(6). The EPA does not believe such a demonstration is possible, given the variety of project scenarios, which, depending on the facts (timing and emission rates from individual and groups of emissions units), would show that each set of rules is more and less stringent than the other in some cases. As we discussed in our response to District Comments 6-6d, the District's rules are flawed in that they allow for improper calculation of net emissions increases, which affects the implementation of NSR requirements. Our responses to Comments 6-6d also describe the MDAQMD's analysis of a permit application for a project involving a power plant and its determination that the project was not a modification because it would result in an emissions decrease, even though the project would increase actual emissions. The same situation could occur in the District because the District rules implicated by the permit application are identical to the MDAQMD's. We do not agree that the District's approach of not considering this project or other similar projects to be a modification constitutes a more stringent program.

As to the District's statement regarding the EPA not raising this issue earlier, the EPA appreciates the coordination and cooperation demonstrated over the period of joint work by our agencies to improve the rules. We remain available to discuss revisions necessary to address the deficiencies with the goal of full approval of revisions to the District's rules and a fully approved NSR program.

Comment #10: The District states that the De Minimis Rule "would have a profound negative effect on air quality" because not only would facilities be able to increase allowable emissions by up to 25 tons per rolling 5-year period, but the rule would also cause other

detrimental practices such as "emissions spiking" and delayed equipment upgrades.

Response to Comment #10: The District's hypothetical assertions that CAA 182(c)(6) would encourage "emissions spiking" to artificially increase actual emissions prior to making a modification are unsupported. As a practical matter, a source operating for two years above its actual needed operations to get as close as possible to its allowable emissions would likely incur significant costs in the process to unnecessarily operate the equipment. We do not see this scenario as providing a realistic incentive; in fact, implementation of CAA section 182(c)(6) would create no greater incentive for a source to increase its actual emissions prior to making a change that may require the source to undergo NNSR than the limited incentive that exists under the District's current rules. Similarly, the District's hypothetical assertion that the De Minimis Rule would discourage facilities from upgrading equipment is outside the scope of our proposed action, which is to ensure the District's NSR rules comply with federal NNSR program requirements regarding the calculation of emission reductions and the quantity of offsets required for significant emission increases.[55]

The District also requests that the EPA "provide clear and convincing evidence that the implementation of USEPA's suggested corrections would indeed produce a benefit to air quality in the region." The objective of the EPA review of the District's submitted rules is to ensure conformity with federal requirements. Our proposed action describes the statutory and regulatory requirements that the District's NSR rules must satisfy for EPA approval.[56] Where the District disagrees with the EPA's finding of deficiency, it has not provided a quantitative or legal demonstration that its rule provisions are more stringent, or at least as stringent, as the federal requirements.

Comment #11: The District states that the EPA's proposed limited disapproval of all rules

[55] We also note that the District's current NSR program fails to adequately address increases in actual emissions that might result from delayed equipment upgrades because the rules allowing net emissions increases to be evaluated using a baseline of pre-project allowable emissions rather than actual emissions. See EPA responses to Comments 6-6d above.

[56] See 88 FR 5826, 5829-30; TSD p. 21-25.

that cite Rule 1304(C)(2) is overbroad. The District states that the EPA has indicated that it is proposing to disapprove Rules 1301, 1302, 1303, 1304, and 1305 primarily due to the cross-references in these rules to provisions in Rule 1304(C)(2). The District states that such an action would disapprove the use of any internal offsetting for any facility—not just Major Facilities—regardless of the calculation used to determine SERs. The District states that such a disapproval might result in an increase of Emission Reductions Credits being banked and then immediately used, under District Regulation XIV, "Emission Reduction Credit Banking," but asserts that it is more probable that it would result in an immediate cessation of all modifications to existing facilities within the District. Therefore, the District states this action is overbroad, as simply disapproving the use of the provisions in Rule 1304(C)(2)(d) would be enough to alleviate the EPA's stated concerns and allow the remainder of the NSR program to be approved in a manner and to the extent that it could be included to satisfy the 70 ppb ozone NAAQS requirements. The District requests that the EPA provide further justification on why a more limited disapproval of the provisions contained in Rule 1304(C)(2)(d) would be insufficient to address the EPA's major alleged deficiencies, as set forth in the EPA's proposed action.

Response to Comment #11: As we stated in our proposed action, the deficiencies pertaining to offsets in the District's NSR program make portions of Rules 1301, 1302, 1303, 1304, and 1305 not fully approvable because the District's NSR program is not consistent with CAA section 182(c)(6). Our basis for that finding is also explained in our responses to Comments 9 and 10 above. In addition, the EPA's TSD provides additional information regarding the deficiencies in these rules, largely as a result of cross references to Rule 1304(C)(2)(d), which allows SERs to be calculated using a baseline of allowable emissions, not actual emissions. This deficiency affects the calculation of net emissions increases in Rule 1304(B)(2). Therefore, the use of the term "net emissions increase" or cross-references to Rule 1304 affect the approvability of Rules 1301, 1302, 1303, and 1305. Please see Table 4 of our TSD for additional information.

The EPA's action to finalize a limited approval and limited disapproval of Rules 1301, 1302, 1303, 1304, and 1305 into the SIP means that the rules, as currently submitted, will be incorporated into the SIP, but they must be revised and resubmitted to the EPA to avoid sanctions and FIP consequences. As we stated in our proposed action, we proposed limited approval and limited disapproval of these rules because although they fulfill most of the relevant CAA requirements and strengthen the SIP, they also contain certain deficiencies. Our final action incorporates into the SIP the submitted rules listed in Table 2 for which we are fully approving or finalizing a limited approval/limited disapproval, including those provisions we identified as deficient.

Comment #12: The District states that the issues with its NSR program are substantially similar to those the EPA raised in the NPRM for the MDAQMD's NSR program.[57] The District requests that the EPA not finalize this action until the MDAQMD's issues are resolved, because any resolution of the issues for the MDAQMD would presumably be similarly applied to the District's program. The District states that if such a delay is not possible, it requests that the EPA not object to the consolidation of a challenge to this action in any future potential litigation involving the MDAQMD's issues.

Response to Comment #12: The EPA believes it will be efficient to work with AVAQMD and MDAQMD simultaneously to resolve the identified deficiencies for both NSR programs. The District's comment regarding future potential litigation is outside the scope of this rulemaking and no response is required.

B. Comments from the Cities of Lancaster and Palmdale

The Cities of Lancaster and Palmdale state that they "adopt[] and join[] in the comment letter submitted by the Antelope Valley Air Quality Management District (AVAQMD)" and that they "would like to reiterate [the District's] comments in their entirety." The EPA's responses to the District's comments are provided in section II.A. of this document.

[57] 87 FR 72434 (November 25, 2022).

C. Comments from Northrop Grumman Corporation ("Northrop Grumman"), Lockheed Martin Aeronautics Company – Palmdale ("Lockheed Martin Aero"), and the United States Department of Defense ("DoD")

Northrop Grumman and Lockheed Martin Aero Comment #1: Both commenters state that the proposed rulemaking identifies alleged deficiencies that are currently approved into the SIP without explanation for why previously approved provisions are now inappropriate. The commenters state that the CAA has not been amended since 1990 and that they have not identified any federal regulatory changes or EPA guidance that provide a basis for determining that the current rules are deficient. The commenters state that they would appreciate an analysis and rationale for the changes to the EPA's interpretations that render the previously approved NSR program provisions now unacceptable.

Response to Northrop Grumman and Lockheed Martin Aero Comment #1: As the EPA stated in our response to the District's Comment #4, the EPA's proposed action and TSD provide citations to the specific provisions in the Act and its implementing regulations that are the basis for the EPA's disapproval of certain specified provisions in the District's revised NSR rules. 40 CFR 51.165(a)(3)(ii)(J) requires offsets for each major modification at a major source in an amount equal to the difference between pre-modification actual emissions and post-modification PTE.[58] The EPA interprets the language in the regulation referring to "the modification" to mean each major modification that is undertaken at a major source, with emphasis on the word "each."

---

[58] See, e.g., EPA, "Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review Regulations," 67 FR 80185 (December 31, 2002), p. I-6-11 ("With regard to the amount of emissions increase that must be offset, consistent with our proposal, the new rules provide once a physical or operational change is determined to be a major modification (based on the 'actual-to-projected-actual' applicability test) the current definition of 'actual emissions' would continue to be used for other NSR purposes, including ambient impact analyses. Based on this position, the new rules for nonattainment NSR provide that the total tonnage of increased emissions, in tons per year, resulting from a major modification must be determined by summing the difference between the allowable emissions after the modification and the 'actual emissions' (as defined by the current rules) before the modification for each emissions unit affected by the modification. [§See 51.165(a)(3)(ii)(J)]"). See also 81 FR 50339, 50340 (August 1, 2016) ("40 CFR 51.165(a)(3)(ii)(J) directs SIPs to include rules to ensure that the total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification. This provision requires providing offsets for each major modification at a major source in an amount equal to the difference between pre-modification actual emissions and post-modification PTE.")

The EPA's interpretation of this provision is consistent with our approval of other NSR SIP rules in the past.[59] Since approving rules from the District's Regulation XIII into the SIP in 1996, the EPA has revised the implementing regulations at 40 CFR 51.165 to clarify the Act's requirements several times. The 2002 revisions to 40 CFR 51.165 added 40 CFR 51.165(a)(3)(ii)(J).[60] As we discussed in this document and in our proposed action and accompanying TSD, the District's submitted rules do not adequately address the requirements in 40 CFR 51.165(a)(3)(ii)(J).[61]

Northrop Grumman and Lockheed Martin Aero Comment #2, and DoD Comment: Northrop Grumman and Lockheed Martin Aero state that the EPA would require the use of HAE or actual emissions even where a particular Emissions Unit has already been offset in a past NSR permitting action. The commenters take issue with the argument that taking credit for these previously offset sources does not represent "real reductions." The commenters state that their facility emission limits, as well as individual permit limits, were created as a result of facility shutdowns (the Ford Motor Company plant in Pico Rivera and the Lockheed Martin Burbank facility). Both commenters state that at the time of the Ford and Lockheed shutdowns, their facilities were under the jurisdiction of SCAQMD, therefore ERCs were calculated pursuant to SCAQMD Rule 1306(e)(2), based on "actual emissions that occurred each year during the two-year period immediately preceding the date of permit application, or other appropriate period determined by the Executive Officer or designee to be representative of the source's cyclical operation, and consistent with federal requirements," and included all adjustments or discounts required as well as payment of any remaining NSR balances. Both commenters assert that these

---

[59] See, e.g., "Revisions to California State Implementation Plan; Bay Area Air Quality Management District; Stationary Sources; New Source Review;" 83 FR 8822 (March 1, 2018); see also "Revision of Air Quality Implementation Plan; California; Sacramento Metropolitan Air Quality Management District; Stationary Source Permits;" 78 FR 53270 (August 29, 2013).

[60] 67 FR 80185 (December 31, 2002).

[61] In our 2002 rulemaking, we also added the requirement in 40 CFR 51.165(a)(2)(ii) that deviations from federal definitions and requirements are generally approvable only if a state specifically demonstrates that the submitted provisions are more stringent, or at least as stringent, in all respects as the corresponding federal provisions and definitions. To date, the District has not made such a demonstration.

were not "paper reductions" but were instead real emissions reductions, and to now determine those reductions as "paper" reductions is without merit.

Similarly, the DoD believes that emissions that are previously offset through an approved New Source Review regulation represent actual emission reductions as required by CAA section 173(c)(1), and as such, can be used for calculating emission reductions pursuant to 1304(C)(2)(d). Fully offset emissions are not "paper reductions"; they represent actual reduction in emissions, banked and used following approved regulatory procedures. DoD argues that the removal of this provision would create a discriminatory situation in which a facility that has previously provided offsets for emission sources or processes is not differentiated from one that has received a permit without providing offsets. DoD requests that the EPA reconsider this change so that facilities have the incentive and flexibility to modify and replace older emission sources to improve the air quality and achieve military mission requirements.

Response to Northrop Grumman and Lockheed Martin Aero Comment #2 and DoD Comment: The EPA disagrees with the comments, although we have no argument with the commenters as to whether the reductions were real at the time the offsets were originally used to permit the emissions units. Instead, the intent of our statement was to clarify that because such emissions reductions were previously used as offsets to create the permitted allowable emissions, they are not real reductions for a current project. 40 CFR 51.165(a)(3)(i)(A) establishes the federal requirements for SIP rules concerning offsets. This provision states that the baseline for determining credit for emissions reductions shall be the actual emissions of the source from which the credits are obtained, where the attainment plan is based on the actual emissions of sources within the nonattainment area. The District's attainment plan is based on actual emissions from permitted sources, thus triggering the requirements of this provision.[62] Thus, an

[62] AVAQMD, "Federal 70 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area)," for adoption on January 17, 2023, p. 24 ("The stationary source inventory is composed of point sources and area-wide sources . . . The inventory reflects *actual* emissions from industrial point sources reported to the Districts by the facility operators through calendar year 2018." (emphasis added)). See also, AVAQMD, "Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area)," March 21, 2017, p. 7 ("This document includes a comprehensive, accurate and current inventory of actual emissions . . . .").

emission unit's actual emissions must be used as the baseline for calculating emission reductions from an existing emission unit, regardless of whether it was previously offset or not. Allowing credit for a reduction in previously offset PTE is not creditable, because that portion of the reduction has already been credited in the attainment plan demonstration. Furthermore, 40 CFR 51.165(a)(3)(ii)(G) explicitly prohibits facilities from using the same emissions reductions more than once. If a facility relies upon emissions reductions for a prior NNSR permit action, those emissions reductions are not eligible for use again in a future NNSR permit action.

The commenters assert that reductions previously used to offset a project may be used to offset emissions increases occurring in the present day. These assertions are problematic – reductions used for offsets must be "surplus" to reductions that were already required by federal law (e.g., by other SIP-approved regulations such as CAA section 182(b)(2) Reasonably Available Control Technology (RACT) requirements and NSR permits). Because the offsets provided for the existing equipment were already "relied" upon to issue an NSR permit, they cannot be used again to issue another NSR permit. The commenters reference ERCs awarded to them by SCAQMD; since AVAQMD was formed in 1997, reductions that were credited by SCAQMD must have occurred at least 20 years in the past.[63] We note here that in our proposed action, we did not identify the prohibition of reliance on previously-used offsets as a deficiency in the District's rules, but the issue relates to the same deficient provision that we identified: Rule 1304(C)(2)(d). We determined that it is appropriate to include an explanation of the requirements stated in 40 CFR 51.165(a)(3)(i)(A) and 40 CFR 51.165(a)(3)(ii)(G) to fully respond to the commenters.

The requirements stated in 40 CFR 51.165(a)(3)(i)(A) and 40 CFR 51.165(a)(3)(ii)(G)

[63] We note that the shutdowns of the facilities referenced in the comments appear to have occurred in the 1980's or early 1990s. See, e.g., EPA, "Reuse and the Benefit to Community: San Fernando Valley (Area 1) Superfund Site: Burbank," October 2018, p. 1 ("The closure of the Lockheed Martin facility in 1991 presented a redevelopment opportunity, while the groundwater cleanup presented a challenge in a water-scarce region."), available at: https://semspub.epa.gov/work/HQ/100002333.pdf; see also, The New York Times, "Northrop to Buy Vacant Ford Plant," February 5, 1982 ("Ford discontinued assembly operations at the plant in January, 1980."), available at: https://www.nytimes.com/1982/02/05/business/northrop-to-buy-vacant-ford-plant.html.

are consistent with the statutory provisions stated in CAA section 173(c)(1), which the DoD asserts is satisfied when previously offset emissions are treated as actual emission reductions for a current project, a statement with which we disagree. The CAA and its implementing regulations require a pre-construction analysis of each project at a major source to determine whether the project will result in a significant emissions increase and a significant net emissions increase, and if so, the quantity of reductions necessary to offset the significant emissions increase. CAA section 173(c)(1) requires NSR SIPs to offset the "total tonnage of increased emissions of the air pollutant from the new or modified source by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant," and that "[s]uch emission reductions shall be, by the time a new or modified source commences operation, in effect and enforceable . . . ." As we explained above, because the District's attainment plan is based on actual emissions from permitted sources, an emission unit's actual emissions must be used as the baseline for calculating emission reductions from an existing emission unit, regardless of whether it was previously offset or not.

In terms of calculating offset quantities, 40 CFR 51.165(a)(3)(ii)(J) is plainly stated as a discrete requirement applicable to each proposed major modification. This provision requires offsets for each major modification at a major source in an amount equal to the difference between pre-modification actual emissions and post-modification potential to emit, which is generally equivalent to allowable emissions. The EPA interprets the language in the regulation referring to "the modification" to mean *each* major modification that a facility undertakes at a major source. The EPA's interpretation of this provision is consistent with our approval of other NSR SIP rules.[64, 65]

---

[64] See, e.g., "Revisions to California State Implementation Plan; Bay Area Air Quality Management District; Stationary Sources; New Source Review," 83 FR 8822 (March 1, 2018); see also "Revision of Air Quality Implementation Plan; California; Sacramento Metropolitan Air Quality Management District; Stationary Source Permits," 78 FR 53270 (August 29, 2013).

[65] In response to the DoD's assertion that the federal requirements "would create a discriminatory situation," we maintain that the permit application process should be sufficient to enable the District to determine the quantity and status of offset credits and reductions; diligent implementation of the federal requirements will avoid confusion and

Northrop Grumman and Lockheed Martin Aero Comment 3: Northrop Grumman and Lockheed Martin Aero state that the AVAQMD's NSR rules assure that increased emissions are offset by enforceable reductions in actual emissions. The commenters state that the CAA and its implementing regulations require that emission increases from new and modified sources in nonattainment areas are offset by emissions reductions that:

(1) Are "in effect and *enforceable*" (CAA section 173(c)) (emphasis in original comment);

(2) are "creditable to the extent that the *old level* of actual emissions . . . exceeds the new level of actual emissions" (40 CFR 51.165(a)(1)(vi)(E)(*1*)) (emphasis in original comment); and

(3) amount to the sum of "the difference between allowable emissions after the modification . . . and the *actual emissions before the modification*" (40 CFR(a)(3)(ii)(J)) (emphasis in original comment).

The commenters state that despite the EPA's reservations about the District's use of a PTE baseline for calculating SERs for previously offset sources, the District's rules do just as the CAA requires. The commenters argue that the District's SER calculations are in fact what turn temporary and unenforceable reductions into actual, permanent, and enforceable reductions, which may be properly credited as offsets or against emission increases when measuring a net emissions increase.

Response to Northrop Grumman and Lockheed Martin Aero Comment #3: The EPA disagrees with the comments. As the commenters state, 40 CFR 51.165(a)(1)(vi)(E)(*1*) specifies that emission reductions are creditable as offsets to the extent that the *old level of actual emissions* . . . exceeds the new level of actual emissions." This provision clearly indicates that the baseline for calculating an emissions reduction is the current actual level of emissions, not

---

unfair outcomes. Removal of the use of a PTE-to-PTE test would align the District's NNSR program with the same federal NNSR program that is applicable in all other areas. We do not see this as discriminatory.

the allowable emissions, as suggested by the commentor. As we explained in our proposed action, the District's program is deficient because it allows sources to calculate the quantity of emissions reductions by using potential to emit as the baseline for the calculations rather than the federally required baseline of actual emissions. Using a PTE-to-PTE test to calculate the quantity of creditable emissions reductions does not satisfy the requirements stated in CAA section 173(c)(1) or 40 CFR 51.165(a)(1)(vi)(E)(*1*) because it does not consider the actual emissions change resulting from a project.[66]

In addition, as the EPA explained in our proposed action, 40 CFR 51.165(a)(3)(ii)(J) directs SIPs to include rules to ensure that the total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with CAA section 173 shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification.[67] This provision requires providing offsets for each major modification at a major source in an amount equal to the difference between pre-modification actual emissions and post-modification PTE.[68]

Contrary to the commenters' assertions, the District's use of a PTE-to-PTE test in lieu of the required actual to potential test renders that portion of the District's NSR program deficient. Therefore, the District's rules do not satisfy the federal requirements that the commenters cite.

Northrop Grumman and Lockheed Martin Aero Comment #4: Northrop Grumman and Lockheed Martin Aero state that EPA's suggested corrections could limit the ability to modernize, which would be detrimental to air quality. The commenters state that there are no available ERCs in the District, and that interdistrict ERC requirements under the California Health and Safety Code along with the EPA's revised regulations that make interprecursor trading between ozone precursors impermissible mean that it is unlikely for the company to

---

[66] See note 22 above regarding Rule 1304(C)(2)(d)(i), which states that the PTE for an emissions unit is specified in a federally enforceable emissions limitation and the generally interchangeable nature of the terms "allowable" and "potential" in the context of this rulemaking regarding the District's NSR rules.
[67] 81 FR 50339, 50340 (August 1, 2016).
[68] Id.

locate sufficient offsets for its projects.

Northrop Grumman states that it recently installed a large new paint hangar equipped with technology to meet the Regulation XIII BACT requirement and is in the process of designing another that will also be equipped with technology to meet BACT. Northrop Grumman argues that eliminating the use of potential to emit as HAE for previously offset sources would make this modernization impossible due to the lack of VOC offsets in this or any upwind district. Lockheed Martin Aero describes plans to update its own facility. Lockheed Martin Aero also argues that eliminating the use of potential to emit as HAE for previously offset sources would make this modernization impossible due to the complete lack of VOC offsets in this or any upwind district.

Response to Northrop Grumman and Lockheed Martin Aero Comment #4: These comments do not provide any information regarding the legality or appropriateness of the EPA's proposed rulemaking action. Instead, they raise concerns about the impacts regarding the outcome of our action, in that the required rule revisions may require such projects to obtain additional offsets, which they state are not available. This concern is outside the scope of our proposed action, which is to ensure the District's NSR rules comply with federal NNSR program requirements regarding the calculation of emission reductions and the quantity of offsets required for significant emission increases.

The EPA will continue to work with the District to resolve the deficiencies in its NSR rules and stakeholders will have the ability to provide input on revisions to the rules through public participation opportunities at the local and federal level.

Northrop Grumman and Lockheed Martin Aero Comment #5: Northrop Grumman Lockheed Martin Aero state that the results of this SIP disapproval could limit modernization and growth at a crucial time for the companies. The commenters assert that the District has provided more than appropriate evidence in its staff report and supporting analyses that its entire NSR program is fully compliant with and is overall more stringent than the CAA. The

commenters claim that the EPA's proposed disapproval is not only unnecessary to protect air quality but could also result in significant unintended consequences.

The commenters state that they are major aerospace defense contractors and employers in the AVAQMD. Northrop Grumman explains that it has plans to add productive capacity and 1,100 jobs at its Palmdale facility this year, and that the EPA's proposed disapproval could limit the ability to achieve that growth, which could also have much broader ramifications, including the ability to meet its contractual obligations to the United States Department of Defense that are important to national security. Lockheed Martin Aero states that it has plans to add productive capacity and jobs at the Palmdale facility, and that limiting that growth could have much broader ramifications including the ability to meet its contractual obligations to the United States Department of Defense that are important to national security.

The commenters conclude with the statement that they do not believe there is evidence that EPA's disapproval will produce benefits to air quality in the region, and instead encourage the EPA to approve the rules as submitted and to focus its efforts on mobile and other underregulated sources in the District that are within its purview.

Response to Northrop Grumman and Lockheed Martin Aero Comment #5: The EPA appreciates the commenters' concerns regarding business operations and employment considerations. The EPA is responsible for ensuring the rules submitted for inclusion in the SIP comply with all applicable CAA requirements prior to approval. Our action is intended to ensure that federal NNSR requirements are met and will be implemented consistently. The EPA will continue to work with the District to resolve the deficiencies in its rules and stakeholders will have the ability to provide input on revisions to the rules through public participation opportunities at the local and federal level. The EPA looks forward to working collaboratively with the District to address the deficiencies in its rules and thereby assisting the District in addressing air pollution in its jurisdiction.

III. EPA Action

None of the submitted comments change our assessment of the submitted rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving the submitted versions of Rules 219, 1300, and 1306. Likewise, as authorized under sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted versions of Rules 1301, 1302, 1303, 1304, 1305, and 1309. This action incorporates submitted Rules 219, 1300, 1301, 1302, 1303, 1304, 1305, 1306, and 1309 into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3) and 301(a), the EPA is simultaneously finalizing a limited disapproval of Rules 1301, 1302, 1303, 1304, 1305, and 1309.

As a result of our limited approval and limited disapproval of Rules 1301, 1302, 1303, 1304, 1305, and 1309, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) for the District within 24 months unless we approve subsequent SIP revisions that correct the deficiencies identified in this action. In addition, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. Sanctions will not be imposed if the EPA approves a subsequent SIP submission that corrects the identified deficiencies before the applicable deadlines.

In this action we are also finalizing an approval of the District's visibility provisions for major sources subject to review under the NNSR program under 40 CFR 51.307. Therefore, we are revising 40 CFR 52.281(d) to remove the FIP for visibility protections as it applied to the District.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference the rules listed in Table 2 of this preamble which implement the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under part D of title I of

the CAA. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders*.

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. *Executive Order 13132: Federalism*

This action does not have federalism implications. It will 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.

F. *Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. *Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority

Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action is finalizing the approval and the limited approval and limited disapproval of a state submittal as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

K. *Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. *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 [**INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. 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, Administrative practice and procedure, Air pollution control, Carbon oxides, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 22, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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:

a. Adding paragraphs (b)(25), (c)(6)(xvii)(E), (c)(31)(vi)(I), and (c)(39)(iii)(H);

b. Revising paragraph (c)(68)(ii); and

c. Adding paragraphs (c)(68)(v) through (vii), (c)(70)(i)(F) and (G), (c)(87)(v)(B), (c)(103)(xviii)(D), (c)(155)(iv)(D), (c)(240)(i)(A)(*6*) and (*7*), and (c)(602).

The additions and revision read as follows:

§52.220 Identification of plan—in part.

* * * * *

(b) * * *

(25) Los Angeles County Air Pollution Control District.

(i) Previously approved on May 31, 1972, in paragraph (b) of this section and deleted with replacement in paragraph (c)(6): Rule 11.

(ii) [Reserved]

(c) * * *

(6) * * *

(xvii) * * *

(E) Previously approved on September 22, 1972, in paragraph (c)(6) of this section and deleted with replacement in paragraph (c)(39)(iii)(B) of this section for implementation in the Antelope Valley Air Quality Management District: Rule 11.

* * * * *

(31) * * *

(vi) * * *

(I) Previously approved on November 9, 1978, in paragraph (c)(31)(vi)(C) of this section and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District: Rule 206.

* * * * *

(39) * * *

(iii) * * *

(H) Previously approved on November 9, 1978, in paragraph (c)(39)(iii)(B) of this section and deleted without replacement: Rules 206 and 219.

* * * * *

(68) * * *

(ii) Previously approved on January 21, 1981, and deleted without replacement for implementation in the South Coast Air Quality Management District: Rule 1311.

* * * * *

(v) Previously approved on January 21, 1981, in paragraph (c)(68)(i) of this section and deleted with replacement in paragraph (c)(240)(i)(A) of this section: Rules 1301, 1303, 1304, 1306, 1310 and 1313.

(vi) Previously approved on January 21, 1981, in paragraph (c)(68)(i) of this section and deleted without replacement: Rule 1307.

(vii) Previously approved on January 21, 1981, in paragraph (c)(68)(i) of this section and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District: Rule 1311.

* * * * *

(70) * * *

(i) * * *

(F) Previously approved on January 21, 1981, in paragraph (c)(70)(i)(A) of this section and deleted with replacement in paragraph (c)(240)(i)(A) of this section: Rule 1302.

(G) Previously approved on January 21, 1981, in paragraph (c)(70)(i)(A) of this section and deleted without replacement: Rule 1308.

* * * * *

(87) * * *

(v) * * *

(B) Previously approved on June 9, 1982, in paragraph (c)(87)(v)(A) of this section and deleted without replacement: Rules 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1310, 1311, and 1313.

* * * * *

(103) * * *

(xviii) * * *

(D) Previously approved on July 6, 1982, in paragraph (c)(103)(xviii)(A) of this section and now deleted with replacement in paragraph (c)(602)(i)(A)(*1*) of this section for implementation in the Antelope Valley Air Quality Management District: Rule 219.

* * * * *

(155) * * *

(iv) * * *

(D) Previously approved on January 29, 1985, in paragraph (c)(155)(iv)(B) of this section and deleted without replacement: Rule 1305.

* * * * *

(240) * * *

(i) * * *

(A) * * *

(*6*) Previously approved on December 4, 1996, in paragraph (c)(240)(i)(A)(*1*) of this section and now deleted with replacement in paragraphs (c)(602)(i)(A)(*2*) through (c)(602)(i)(a)(*9*) of this section for implementation in the Antelope Valley Air Quality Management District: Rules 1301, 1302, and 1309, adopted on December 7, 1995, Rule 1303, adopted on May 10, 1996, and Rules 1304 and 1306, adopted on June 14, 1996.

(*7*) Previously approved on December 4, 1996, in paragraph (c)(240)(i)(A)(*1*) of this section and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District: Rules 1309.1, 1310 and 1313, adopted on December 7, 1995.

* * * * *

(602) The following regulations were submitted on August 3, 2021, by the Governor's designee as an attachment to a letter dated August 3, 2021.

(i) *Incorporation by reference.* (A) Antelope Valley Air Quality Management District.

(*1*) Rule 219, "Equipment Not Requiring a Permit," amended on June 15, 2021.

(2) Rule 1300, "New Source Review General," amended on July 20, 2021.

(3) Rule 1301, "New Source Review Definitions," amended on July 20, 2021.

(4) Rule 1302 "New Source Review Procedure," (except 1302(C)(5) and 1302(C)(7)(c)), amended on July 20, 2021.

(5) Rule 1303, "New Source Review Requirements," amended on July 20, 2021.

(6) Rule 1304, "New Source Review Emissions Calculations," amended on July 20, 2021.

(7) Rule 1305, "New Source Review Emissions Offsets," amended on July 20, 2021.

(8) Rule 1306, "New Source Review for Electric Energy Generating Facilities," amended on July 20, 2021.

(9) Rule 1309, "Emission Reduction Credit Banking," amended on July 20, 2021.

(B) [Reserved]

(ii) [Reserved]

* * * * *

3. Section 52.281 is amended by adding paragraph (d)(10) to read as follows:

§52.281 Visibility protection.

* * * * *

(d) * * *

(10) Antelope Valley Air Quality Management District.

* * * * *

[FR Doc. 2023-13763 Filed: 6/30/2023 8:45 am; Publication Date: 7/3/2023]