



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2025-0625; FRL-12877-02-R9]

Air Plan Revisions; California; Mojave Desert Air Quality Management District; New Source Review; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing conditional approval of five permitting rules as a revision to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These are revisions to the District's New Source Review (NSR) air permitting program rules for new and modified sources of air pollution under the Clean Air Act (CAA or "Act"). The submitted rules address deficiencies identified in a previous limited disapproval action and incorporate other revisions related to the NSR permitting requirements. If finalized, this action will update the MDAQMD's current SIP with the revised rules. As a separate action in this *Federal Register*, we are making an interim final determination that will stay or defer the imposition of CAA sanctions associated with our previous limited disapproval action.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2025-0625 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities 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, U.S. Environmental Protection Agency, Region IX (AIR-3-2), telephone number: (415) 947-4156, email address: kelly.shaheerah@epa.gov.

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

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The word or initials *MDAQMD* or *District* mean or refer to the Mojave Desert Air Quality Management District.
- (ii) The word or initials *CAA* or *Act* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (iii) The word or initials *CARB* mean or refer to the California Air Resources Board.
- (iv) The initials *CFR* mean or refer to Code of Federal Regulations.
- (v) The initials or words *EPA*, *we*, *us*, or *our* mean or refer to the United States Environmental Protection Agency.
- (vi) The initials *NA* mean or refer to nonattainment.
- (vii) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.
- (viii) The initials *NSR* mean or refer to New Source Review.
- (ix) The initials *NNSR* mean or refer to nonattainment New Source Review.
- (x) The initials *SIP* mean or refer to State Implementation Plan.
- (xi) The word *State* means or refers to the State of California.
- (xii) The word *TSD* means or refers to the Technical Support Document.

I. The State’s Submittal

A. What rules are in the current SIP?

Table 1 lists the rules in the current SIP with the dates they were previously amended or revised by MDAQMD, submitted by the California Air Resources Board (CARB), the governor’s designee for California SIP submittals, and approved by the EPA.

Table 1–Current SIP Rules

Rule number	Rule title	State effective date	EPA action date	Federal Register citation
1301	New Source Review Definitions	3/22/2021	6/30/2023	88 FR 42258
1302	New Source Review Procedure	3/22/2021	6/30/2023	88 FR 42258
1303	New Source Review Requirements	3/22/2021	6/30/2023	88 FR 42258
1304	New Source Review	3/22/2021	6/30/2023	88 FR 42258

	Emissions Calculations			
1305	New Source Review Emission Offsets	3/22/2021	6/30/2023	88 FR 42258

B. What rules did the State submit?

Table 2 lists the rules addressed by this proposal with the dates they were amended or revised by the MDAQMD and submitted by CARB, the agency that serves as the governor’s designee for California SIP submittals.

Table 2–Submitted Rules

Rule number	Rule title	Adoption / amendment date	Submitted date
1301	New Source Review Definitions	3/25/2024	8/7/2024
1302 ¹	New Source Review Procedure	3/25/2024	8/7/2024
1303	New Source Review Requirements	3/25/2024	8/7/2024
1304	New Source Review Emissions Calculations	3/25/2024	8/7/2024
1305	New Source Review Emission Offsets	3/25/2024	8/7/2024

On February 7, 2025, CARB’s August 7, 2024 submittal (hereafter referred to as the “2024 Submittal”) for the MDAQMD was deemed complete by operation of law according to 40 CFR part 51, appendix V, which must be met before formal EPA review.

C. What is the purpose of the submitted rule revisions?

The 2024 Submittal is intended to address certain deficiencies identified by the EPA in the MDAQMD Rules 1301, 1302, 1303, 1304, and 1305 listed in table 1. The deficiencies pertain to certain applicable nonattainment NSR requirements under the CAA, in part D of title I of the Act, and the implementing regulations under 40 CFR 51.165. The nonattainment areas under the MDAQMD’s jurisdiction are the San Bernardino County portion of the West Mojave Desert nonattainment area which is designated as a Severe nonattainment area for the 2008 and

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.

2015 8-hour ozone NAAQS, and the Trona Planning Area in San Bernardino County which is designated as a Moderate nonattainment area for the 1987 PM₁₀ NAAQS. 40 CFR 81.305. The rules listed in table 2 are intended to replace the rules currently in the SIP as listed in table 1.

II. The EPA’s Evaluation and Action

A. What is the background for this proposal?

On November 25, 2022, the EPA proposed a limited approval/limited disapproval action for MDAQMD’s Regulation XIII NSR Rules.² On June 30, 2023, the EPA finalized this limited approval/limited disapproval action (hereafter called the “2023 NSR Action”).³ As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA finalized a limited approval and limited disapproval of Rules 1301, 1302, 1303, 1304, and 1305 because although they fulfill most of the relevant CAA requirements and strengthen the SIP, they also contained six deficiencies that did not fully satisfy the relevant requirements for preconstruction review and permitting under section 110 and part D of title I of the Act. The deficiencies are described in the October 5, 2022 TSD for the action, as well as in the preambles to the November 25, 2022 proposed rule and the 2023 NSR Action. In addition, the EPA included the description of the six deficiencies in the preambles to the July 9, 2024 proposed rulemaking to promulgate a Federal Implementation Plan (“FIP”) in a portion of the MDAQMD to address the deficiencies identified in the 2023 NSR Action,⁴ and in a December 30, 2024 rule (hereafter the “2024 NSR Action”)⁵ finalizing the July 9, 2024 rulemaking and affirming the EPA’s disapproval of Rule 1304(C)(2)(d) in response to the Ninth Circuit’s remand of the 2023 NSR Action.⁶ The TSD for this action provides more information on the MDAQMD’s revisions for Rules 1301, 1302, 1303, 1304, and 1305 to address the deficiencies identified by the EPA. These deficiencies and the MDAQMD’s

² 87 FR 72434.

³ 88 FR 42258.

⁴ 89 FR 56237.

⁵ 89 FR 106332.

⁶ *Mojave Desert Air Quality Mgmt. Dist. v. U.S. Env’t. Prot. Agency*, No. 23-1411 (9th Cir. September 5, 2024), Docket No. EPA-R09-OAR-2022-0338, available in the docket for this action and at <https://cdn.ca9.uscourts.gov/datastore/memoranda/2024/09/05/23-1411.pdf>.

revisions to address these deficiencies are summarized as follows.

1. Use of the Term “Contract”

The EPA determined that the use of the term “contract” as interchangeable with the term “permit” was deficient. Specifically, the MDAQMD Rules 1302(D)(6)(a)(iii) and 1304(C)(4)(c) allowed an owner and/or operator to obtain a valid permit or “contract” that would be enforceable by the District. The MDAQMD’s rules define Authority to Construct Permit (ATC) and Permit to Operate (PTO), but do not define term “contract” as interchangeable with the term “permit.” The EPA found that the term “contract” was not an acceptable alternative to the term “permit” and thus the language in MDAQMD Rules 1302(D)(6)(a)(iii) and 1304(C)(4)(c) was not approvable as a SIP revision.

2. Calculation of the Amount of Offsets Required

The EPA determined that the calculation procedures specified to determine the amount of offsets required in certain situations was deficient. Specifically, Rule 1304 allows a potential-to-potential test under certain circumstances for calculating the quantity of offsets required in some situations that involve the use of Simultaneous Emission Reductions (SERs) under 1304€(2)(d). This calculation procedure can also be used for calculation of required offsets for a “Modified Major Facility.” The EPA found that calculating emissions decreases using a potential emissions baseline allows reductions “on paper” that do not represent real emissions reductions and is not consistent with the requirements of CAA section 173€(1), as well as 40 CFR 51.165 (a)(3)(i), (a)(3)(ii)(G), (a)(3)(ii)(J), and (a)(1)(vi)€, to offset actual emissions increases. The deficiency identified in Rule 1304, through cross-references, also causes related deficiencies in Rules 1301, 1302, 1303, and 1305.

3. Definitions of “Major Modification” and “Modification (Modified)” in Rule 1301

The EPA found that the definitions for “Major Modification” and “Modification (Modified)” pursuant to Rule 1301(NN) and 1301(JJ), respectively, were deficient. This deficiency is also related to Rule 1304(C)(2)(d) pertaining to the calculation of SERs.

Specifically, a “Net Emissions Increase” pursuant to Rule 1304(B)(2) allows SERs “calculated and verified pursuant to [1304(C)(2)]” to be subtracted from the total of all “Net Emissions Increase” at any given facility. The EPA found that this can allow a permit applicant to avoid certain NSR requirements entirely (i.e., lowest achievable emissions reduction (LAER), offsets, visibility, etc.).⁷ Therefore, the EPA found that the District’s calculation procedures for “Modification” and “Major Modification” were not consistent with the federal definition of “Major Modification” pursuant to 40 CFR 51.165(a)(1)(v)(A)(1); the calculation procedures for determining offsets pursuant to 40 CFR 51.165(a)(3)(ii)(J); and the criteria for determining the emission decreases that are creditable pursuant to 40 CFR 51.165(a)(1)(vi)(E)(1).

4. Historic Actual Emissions (HAE) Procedures

The EPA found that the definition of Historical Actual Emissions (HAE) pursuant to Rule 1304(D)(2)(a)(i) was deficient because of a typographical error that includes the word “proceeds” rather than “precedes.”

5. Interprecursor Trading

The EPA found that Rule 1305 section (C)(6) was deficient because it allowed the use of interprecursor trading between nonattainment pollutants and their precursors on a case-by-case basis for ozone, which is no longer allowed.

6. CAA sections 182(c)(6) and 182(d)

The EPA found that the District’s NSR program was deficient because it did not satisfy the requirements in CAA sections 182(c)(6) and 182(d) that apply to severe ozone nonattainment areas.

B. How is the EPA evaluating the rules?

The EPA has reviewed the revisions to the MDAQMD rules listed in table 2 for compliance with the following CAA requirements: (1) the general SIP requirements as set forth

⁷ The District’s NSR program uses the term best available control technology (BACT) instead of LAER for both nonattainment pollutants. See Rule 1301(J).

in CAA section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i); (2) the stationary source preconstruction permitting program requirements as set forth in CAA part D of title I, including CAA sections 171, 172(c)(5), 173, and 182; (3) the requirements for the review and modification of major sources in accordance with 40 CFR 51.160-51.165; (4) the requirements for the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I federal area in accordance with 40 CFR 51.307; (5) the SIP revision requirements as set forth in CAA sections 110(l) and 193; and (6) the definition of “Stationary Source” in CAA section 302(z).

Sections 110(a)(2) and 110(l) of the Act require that each SIP or revision to a SIP submitted by the State must be adopted after reasonable notice and public hearing. In addition, section 110 of the Act requires that SIP rules be enforceable. Section 110(a)(2)(C) of the Act requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. Section 110(a)(2)(E)(i) of the Act requires that each SIP provide necessary assurances that the state will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan.

Part D of title I of the Act contains certain definitions applicable to areas designated nonattainment for a NAAQS (section 171); the general requirements for permits for the construction and operation of new or modified major stationary sources anywhere in nonattainment areas referred to as nonattainment NSR (NNSR) (section 172); other additional preconstruction permit requirements for new or modified major stationary sources proposing to construct in nonattainment areas (section 173); and the de minimis SIP requirements in Severe nonattainment areas (sections 182(c)(6) and 182(d)).

The EPA’s regulations at 40 CFR 51.160-51.164 provide general requirements to implement the statutory mandate under section 110(a)(2)(C) of the Act that is commonly referred to as the “general” or “minor” NSR program. These NSR program regulations impose

requirements for approval of state and local programs that are more general in nature as compared to the specific statutory and regulatory requirements for NSR permitting programs under part D of title I of the Act.

The EPA's regulations at 40 CFR 51.165 set forth the EPA's regulatory requirements for SIP-approval of a nonattainment NSR permit program. Our review also evaluated the submittal for compliance with the NNSR requirements applicable to Severe ozone nonattainment areas and ensured that the submittal addressed the NNSR requirements for the 2015 ozone NAAQS.

The EPA's regulations at 40 CFR 51.307 set forth the protection of visibility requirements that apply to NSR programs. This provision requires that certain actions be taken in consultation with the local Federal Land Manager if a new major source or major modification may have an impact on visibility in any mandatory Federal Class I Area.

Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA.

Section 193 of the Act, which only applies in nonattainment areas, prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in any manner unless the modification ensures equivalent or greater emissions reductions of such air pollutant.

Section 302(z) of the Act defines the term "Stationary Source" as generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in title II of the Act.

Our TSD, which can be found in the docket for this rule, contains a more detailed discussion of the approval criteria.

C. Do the rules meet the evaluation criteria?

The EPA has reviewed the submitted rules in accordance with the rule evaluation criteria

described above. With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. According to the documentation provided in the 2024 Submittal, the state published public notices for announcing the public comment periods and public hearings in the *Riverside Press Enterprise* and in the *San Bernardino Sun* on February 22, 2024. Additionally, a public hearing was held on March 25, 2024. Based on our review of this information and the information that was provided in the 2024 Submittal, we find that there is sufficient evidence of public notice, and opportunities for comment and public hearing prior to adoption and submittal of these rules to the EPA.

With respect to substantive requirements, we have reviewed the submitted rules in table 1 in accordance with the evaluation criteria discussed above. We are proposing to conditionally approve the revisions to the MDAQMD's Rules 1301, 1302, 1303, 1304, and 1305 because, for the most part, they address the substantive statutory and regulatory requirements for NSR permit programs as contained in section II.B. of this document for the deficiencies identified by the EPA in the 2023 NSR Action. Rule 1304, however, contains a remaining deficiency; therefore, we are proposing conditional approval pursuant to CAA section 110(k)(4), on the basis of a commitment by CARB and the MDAQMD to revise Rule 1304 to correct the remaining deficiency within one year of the effective date of a final conditional approval action.

D. How do the rule revisions address the deficiencies?

The following are brief descriptions of the revisions to MDAQMD's Rules 1301, 1302, 1303, 1304, and 1305 that address the deficiencies identified by the EPA in the 2023 NSR Action. Our TSD contains a more detailed discussion of our analysis of the submitted rules that form the basis for our proposed action.

1. Use of the Term "Contract"

In the 2023 NSR Action, the EPA determined that the use of the term "contract" in 1302(D)(6)(a)(iii) and 1304(C)(4)(c) is deficient because the term is used interchangeably with a

permit (i.e., an Authority to Construct (ATC) or a Permit to Operate (PTO)). However, MDAQMD's NSR rules do not 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. The MDAQMD clarified in the comments it submitted on EPA's November 2022 proposed rulemaking action that the term "contract" appears to be superfluous because of requirements elsewhere in its rules and that the retention of the term was inadvertent. The MDAQMD stated in that same comment letter that it would remove the term "contract" from the rule provisions the EPA identified.

In the 2024 Submittal, the MDAQMD revised Rule 1304(C) by removing the term "contract" from Rule 1304(C)(4)(c). The MDAQMD also removed the reference to Net Emissions Increase from Rule 1304(C)(5). Therefore, MDAQMD's revision of 1304(C) corrects the deficiency in 1304(C) concerning the term "contract." The MDAQMD neglected to remove the term "contract" from Rule 1302(D)(6)(a)(iii), but given the explanation it provided in its comments to the EPA's 2022 proposed rulemaking and the revision it made to Rule 1304(C) indicate MDAQMD's interpretation of the term "contract" is consistent with federal requirements, the EPA is recategorizing the inclusion of the term "contract" in Rule 1302(D)(6)(a)(iii) from a deficiency to a recommendation for further improvement in future revisions to Rule 1302.

2. Calculation of the Amount of Offsets Required

In the 2023 NNSR Action, the EPA determined that Rule 1304(C)(2)(d) was deficient because it allows the use of a potential-to-emit (PTE)-to-PTE calculation procedure for calculating the quantity of "Simultaneous Emission Reductions" (SERs) that can be used as offsets at a "Modified Major Facility." The EPA determined that Rule 1304(C)(2)(d), in certain situations, does not comply with CAA section 173(c)(1), 40 CFR 51.165(a)(3)(i), (a)(3)(ii)(G), (a)(3)(ii)(J), and (a)(1)(vi)(E). Additionally, because either Rule 1304(C) or Rule 1304(C)(2)(d) is referenced in Rules 1301, 1302, 1303, and 1305, the EPA also determined that these

referenced rules are deficient. In a letter dated June 12, 2025 (“June 12, 2025 Commitment Letter”) the MDAQMD committed to revising Rule 1304 to add a provision to rescind section (C)(2)(d) such that it will no longer be in effect 24 months after the effective date of the EPA’s final approval of the revised Rule 1304 into the SIP. The June 12, 2025 Commitment Letter also includes MDAQMD’s commitment to transmit its revised rule to CARB in time for CARB to submit the rule to the EPA within 12 months of the publication of a final conditional approval by the EPA.⁸ Relatedly, in a letter from CARB dated June 17, 2025 (“June 17, 2025 Commitment Letter”), CARB also commits to submit the rule to the EPA within 12 months of the publication of a final conditional approval by EPA.⁹

Section 110(k)(4) of the Act allows the EPA to conditionally approve a SIP revision based on a commitment from the State to adopt and submit specific, enforceable measures to correct the identified deficiency no later than one year after the date of approval of the plan revision. The MDAQMD has committed to adopt and submit, within the one-year timeframe specified in section 110(k)(4), a revised rule that would add a provision to rescind Rule 1304 section (C)(2)(d) 24 months after the effective date of the EPA’s final approval of the revised rule. Because the inclusion of Rule 1304(C)(2)(d) in the MDAQMD’s NNSR program is the deficiency pertaining to offset requirements identified in the 2023 NSR Action, rescission of section (C)(2)(d) of Rule 1304 would correct the deficiency concerning offsets identified in the 2023 NSR Action. As explained further below, we find the 24-month sunset period proposed by the MDAQMD to be justified by the particular circumstances surrounding the MDAQMD’s NNSR program and the District’s need for time to reassess its emissions reduction credit (ERC) banking reserves for compliance with federal offset requirements.¹⁰ The EPA’s conditional approval, if finalized, would trigger the 1-year timeframe under CAA section 110(k)(4) for the

⁸ Commitment letter from Brad Poiriez, Executive Officer of the MDAQMD, to Josh F.W. Cook, EPA Region IX Regional Administrator, and Dr. Stephen Cliff, CARB Executive Officer, dated June 12, 2025.

⁹ Commitment letter from Vernon Hughes, Assistant Division Chief, Air Quality Planning and Science Division, CARB, to Josh F.W. Cook, EPA Region IX Regional Administrator, dated June 17, 2025.

¹⁰ See *Alabama Power Co. v. Costle*, 636 F.2d 323, 357-60 (D.C. Cir. 1979) (discussing considerations of “administrative necessity” that may provide basis for deferred regulation).

MDAQMD to revise and submit Rule 1304 consistent with the MDAQMD's commitment. If EPA subsequently approves the revised Rule 1304 into the SIP, that action would provide the basis for the EPA to terminate the Federal Implementation Plan (FIP) that is currently in place in the MDAQMD, under section 110(c)(1) of the Act.¹¹

The MDAQMD's overhaul of the offsets calculations portion of its NNSR program, which has been in effect since at least 1995, requires the District to reconfigure its ERC banking system to conform to federal requirements, which the MDAQMD has committed to implement. The MDAQMD has represented that it faces a significant administrative burden in reconfiguring its ERC bank to comply with federal requirements.¹² The 24-month period following the approval of MDAQMD's revised Rule 1304 and simultaneous termination of the NNSR FIP that is currently in effect in the MDAQMD is unlikely to interfere with attainment or reasonable further progress in the MDAQMD.¹³ Thus, the EPA is proposing to conditionally approve the MDAQMD's 2024 Submittal based on the MDAQMD's commitment to revise Rule 1304 to add a provision to rescind section (C)(2)(d) in its entirety, effective 24 months after the EPA's final approval of the revised Rule 1304 into the SIP. The June 12, 2025 and June 17, 2025 Commitment Letters detail revisions that are clear and enforceable, correct the identified deficiencies, and fulfill CAA requirements for a conditional approval. If the EPA finalizes the proposed conditional approval and the MDAQMD and CARB submit a revised Rule 1304 that rescinds section (C)(2)(d) as described in the June 12, 2025 and June 17, 2025 Commitment Letters, the EPA will propose to fully approve Rule 1304, as revised, into the California SIP.

The EPA's TSD for this action describes how the MDAQMD's revision to Rule 1304

¹¹ In the 2024 NSR Action, the EPA promulgated a FIP to address the deficiency related to Rule 1304(C)(2)(d). 89 FR 106332. Our TSD for that action can be found in the docket for this rule and contains a more detailed discussion of the FIP.

¹² Commitment letter from Brad Poiriez, Executive Officer of the MDAQMD, to Josh F.W. Cook, EPA Region IX Regional Administrator, and Dr. Stephen Cliff, CARB Executive Officer, dated June 12, 2025.

¹³ The MDAQMD's 2015 ozone NAAQS attainment plan, which is titled "MDAQMD Federal 70 ppb Ozone Attainment Plan" is available on its website at <https://www.mdaqmd.ca.gov/home/showpublisheddocument/9693/638131029372000000> and in the docket for this action. Chapter 2, "Emission Inventories," of the MDAQMD attainment plan presents the District's emission inventory.

would correct the related deficiencies in Rules 1301, 1302, 1303, and 1305. The cross references to section (C) in Rule 1304 in those rules render them deficient because of the deficiency in Rule 1304(C)(2)(d), but MDAQMD's revision to rescind section (C)(2)(d) would immediately correct these deficiencies without the need for revisions to any other provisions in the other MDAQMD Regulation XIII rules. If either the MDAQMD or CARB fails to adopt and submit these amendments within the required timeframe, CAA section 110(k)(4) specifies that the conditional approval of Rule 1304 shall be treated as a disapproval.

3. Definitions of "Major Modification" and "Modification (Modified)" in Rule 1301

In the 2023 NSR Action, the EPA determined that Rule 1301(JJ) (Definition for "Major Modification") and Rule 1301(NN) (Definition of "Modification (Modified)") are deficient because they are inconsistent with the federal definition for Major Modification pursuant to 40 CFR 51.165(a)(1)(v)(A)(1),¹⁴ and the calculation procedures for determining offsets pursuant to 40 CFR 51.165(a)(3)(ii)(J) and CAA section 173(c)(1) and 40 CFR 51.165(a)(1)(vi)(E)(1). The EPA also determined that the use of calculation procedures in 1304(B)(2) does not conform to the calculation procedures for determining offsets pursuant to CAA section 173(c)(1) and 40 CFR 51.165(a)(3)(ii)(J) and the criteria for determining the emissions decreases that are creditable pursuant to 40 CFR 51.165(a)(1)(vi)(E)(1). The MDAQMD amended Rules 1301(JJ) (Definition of "Major Modification"), 1301(NN) (Definition of "Modification (Modified)"), 1301(NNN) (Definition of "Significant"), and 1301(QQ) (Definition of "Net Emissions Increase") to remove the references to "Net Emissions Increase" to resolve the deficiencies previously identified by the EPA such that these requirements are no longer deficient. The MDAQMD also removed the "Net Emissions Increase" calculations that were in Rule 1304(B)(2) and changed the definition of this term in Rule 1301(QQ) to address the deficiency previously identified by the EPA. These revisions address the deficiencies previously identified

¹⁴ Note that 40 CFR 51.165(a)(1)(v)(A)(1) refers to Step 1 and not Step 2 of the NSR applicability test for a Major Modification.

by the EPA concerning NSR applicability.

4. Historic Actual Emissions (HAE) Procedures

In the 2023 NSR Action, the EPA determined that the HAE procedures in Rule 1304(D)(2) are deficient because of a typographical error in which the word “precedes” is used rather than “proceeds.” The MDAQMD revised Rule 1304 by correcting the typographical error in (D)(2)(a)(i), changing the word “proceeds” to “precedes.” This revision addresses the deficiency previously identified by the EPA.

5. Interprecursor Trading

In the 2023 NSR Action, the EPA determined that Rule 1305(C)(6) is deficient because it allows interpollutant trading for ozone precursors on a case-by-case basis, which is no longer allowed under 40 CFR 51.165. The MDAQMD revised Rule 1305(C)(6) by removing the interprecursor trading provisions. This revision resolves the deficiency that the EPA previously identified.

6. CAA sections 182(c)(6) and 182(d)

In the 2023 NSR Action, the EPA determined that the MDAQMD’s NSR rules do not contain the de minimis plan requirements for ozone nonattainment areas contained in CAA sections 182(c)(6) and 182(d) that apply to areas classified as Severe nonattainment. The MDAQMD amended Rule 1303 to include the de minimis plan requirements. Specifically, the MDAQMD’s revisions to Rule 1303(A), which are included in the 2024 Submittal, ensure that facilities with PTE above thresholds in Rule 1303(B)(1) must install BACT at any new or modified permit unit.¹⁵ Rule 1303(B) requires facilities with PTE greater than the threshold levels stated in Rule 1303(B)(1) to obtain offsets. The MDAQMD’s revision addresses the deficiency previously identified by the EPA.

E. Proposed action and public comment

¹⁵ The District’s definition of BACT at Rule 1301(J) is consistent with the definition of LAER in 40 CFR 51.165(a)(1)(xiii).

The EPA is proposing conditional approval of MDAQMD Rules 1301, 1302, 1303, 1304, and 1305 as authorized in section 110(k)(4) of the Act. Section 110(k)(4) of the Act states that the Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. It further states that any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment. The June 12, 2025 and June 17, 2025 Letters contain commitments by MDAQMD and CARB to correct the deficiency pertaining to Rule 1304(C)(2)(d) identified in the 2023 NSR Action, as described in this proposed action, and submit the revised Rule 1304 to EPA within one year of EPA's final conditional approval, in accordance with section 110(k)(4) of the Act. Therefore, as authorized in section 110(k)(4) of the CAA, the EPA proposes to conditionally approve the submitted rules based on the commitment by the State to adopt and submit revisions to Rule 1304(C)(2)(d) by a date certain but not later than one year after the effective date of the conditional approval. If this proposed conditional approval is finalized as proposed, and the MDAQMD or CARB fails to comply with this commitment, the conditional approval would be treated as a disapproval.

The EPA is proposing to find that our action, if finalized, 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. With specific regard to MDAQMD's commitment to revise Rule 1304 to include a provision that would rescind section (C)(2)(d) and its consistency with section 110(l) of the Act, the EPA in this rulemaking action is proposing to conditionally approve the 2024 Submittal on the basis of the June 12, 2025 and June 17, 2025 Letters, which commit the MDAQMD and CARB to adopt and submit revisions to Rule 1304 that would add provisions to rescind section (C)(2)(d) 24 months after the effective date of the EPA's full approval of Rule 1304. Rescission of Rule 1304(C)(2)(d) is SIP strengthening, but the 24-month period between

the EPA's approval of the revised Rule 1304 into the SIP and simultaneous termination of the FIP means that Rule 1304(C)(2)(d), which is deficient for the reasons provided in the 2023 NSR Action and 2024 NSR Action, would be in effect for that 24-month period before the District implements the revised Rule 1304. For the reasons described in section II.D.2. of this document, the EPA is proposing to find this short delay in the District's compliance with federal NNSR offset requirements justified as a matter of administrative necessity in light of the MDAQMD's need to reassess and revise the ERC banking reserves implemented as part of its NNSR program.

For the deficiencies described in this document, which relate to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) became effective in the nonattainment areas at issue on January 31, 2024,¹⁶ and the highway funding sanctions in CAA section 179(b)(1) will become effective on July 31, 2025.¹⁷ As a separate action in this *Federal Register*, we are making an interim final determination that will stay or defer the imposition of CAA sanctions associated with our previous limited disapproval action.

If we finalize this action as proposed, our action conditionally approving Rules 1301, 1302, 1303, 1304, and 1305 will be codified through revisions to 40 CFR 52.220 (Identification of plan - in part) and 40 CFR 52.248 (Identification of plan—conditional approval). If CARB or the MDAQMD fail to comply with this commitment, the conditional approval would convert to a disapproval. We will accept comments from the public on this proposal until **[insert date 30 days after date of publication in the Federal Register]**. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MDAQMD rules described in table 2 of this preamble.

¹⁶ 18 months after the effective date of July 31, 2023 of the 2023 NSR Action.

¹⁷ 6 months after the offset sanction is imposed.

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).

IV. Statutory and Executive Order Reviews

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 approve state choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, 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. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: July 15, 2025.

Joshua F.W. Cook,
Regional Administrator, Region IX.

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