materials authorized under the General rule for open burning for pleasure or celebratory purposes but excludes cooking fires and fires used for debris disposal purposes. Although recreational fires are no longer included in the list of exemptions, there is no substantive difference in how they are addressed under the proposed revisions. As under the current rule, the materials that may be burned in a recreational fire have not changed and recreational fires remain prohibited when burn bans are in effect. Recreational fires remain exempt from the more specific requirements in paragraph (e)(1) of this section that apply to open burns, such as the provisions regarding smoldering.

The EPA has also added a proposed exemption for fires set as part of a firefighting strategy (*e.g.,* back burn, fire break, or safety perimeter burn), but only if approved by the appropriate fire safety jurisdiction and under an emergency or incident command situation. Such fires may reduce the duration or size of uncontrolled fires and therefore may have a positive impact on levels of particulate matter overall.

The EPA is also proposing revisions to the provisions of this rulemaking that specify the requirements for conducting open burning. The proposed revisions clarify that a burn ban declared by the Regional Administrator remains in effect until the Regional Administrator makes a new determination and terminates the burn ban, as well as to describe the methods the EPA uses to announce a burn ban and its termination. The EPA is also adding language to clarify that a burn ban can be declared for specific geographic areas within an Indian reservation. We are also clarifying that burn bans are based on the 24-hour PM NAAQS and that the time period for projections of air quality levels is a maximum of 72 hours. These clarifications are consistent with the intent of the rule and how it has been implemented in practice.

The EPA has heard concerns that the criterion for triggering burn bans, specifically 75% of any 24-hour PM NAAQS, could be overly conservative and impede the increased use of prescribed fire to help reduce the risk of wildfire within the Indian reservations covered by the FARR by reducing the number of available burn days. As mentioned previously, the EPA is currently reviewing the PM NAAQS and there are additional concerns that if that review results in a lower level of the 24-hour PM NAAQS, the number of available burn days could be further reduced.

The purpose of a burn ban is to protect human health and air quality by preventing emissions from open burning from pushing PM concentrations above the level of the NAAQS, so it is important to call a burn ban before concentrations reach the level of the NAAQS. The EPA acknowledges that there are a number of other criteria for declaring burn bans that could also accomplish this objective. The EPA is therefore soliciting comment on changing the criteria to whether PM concentrations exceed or are projected to exceed the NAAQS anytime during the next 72 hours. Because the meteorological forecasting tools and availability of real-time air monitoring data have improved significantly since 2005 when the FARR was promulgated, relying on projections of the PM NAAQS, rather than a percentage below the PM NAAQS, for calling burn bans may also provide reasonable assurance that emissions from open burning will not cause or contribute to an exceedance of the PM NAAQS. This revision would potentially reduce the number of burn bans and thus increase the available days during which prescribed burning could be conducted.

The EPA is also proposing revisions to account for the fact that, in certain defined instances (*e.g.,* multi-day fires) and with the appropriate permits, a fire is allowed to smolder when it would have less impact on air quality than putting the fire out and relighting it. The revisions would also explicitly require that a person 18 years of age or older must be in attendance of the fire at all times; that there be means available for extinguishing the fire, such as water or chemical fire suppressant; and that a fire be extinguished if safe to do so, at the request of the EPA based on a determination that the open burning is causing or has the potential to cause or contribute to an exceedance of a national ambient air quality standard. When relevant, the EPA will also request that a fire be extinguished if safe to do so, based on a determination that the open burning is causing any other adverse impact on air quality. These simple precautions help ensure that fires are responsibly managed, considering changing adverse meteorological conditions, other scheduled burning activities in the surrounding area and other factors that could impact a burn. For burns that could significantly impair visibility on roadways, coordination with traffic safety authorities must take place before igniting a burn in order to provide an opportunity for such authorities to require appropriate transportation safety measures. ''Small open burns'', as defined in 40 CFR 49.123, are exempt from this requirement. Because of the limited size of small open burns, the amount of material consumed would not be expected to cause a plume large enough and dense enough to impair visibility on roadways.

Finally, the EPA is clarifying that nothing in the open burning rule exempts or excuses any person from complying with applicable laws and ordinances of Tribal governments. This was already encompassed in the language in the existing rule stating that nothing in the open burning rule ''exempts or excuses any person from complying with applicable laws and ordinances of . . . other governmental jurisdictions.'' The proposed revision is being made for clarity here, as well as in the following burn permit sections.[4]

Dated: November 17, 2022.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2022–25584 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0338; FRL–10269–01–R9]

Approval, Limited Approval and Limited Disapproval of California Air Plan Revisions; Mojave Desert Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing an approval and a limited approval and limited disapproval of a revision to the Mojave Desert Air Quality Management District (MDAQMD or ''District'') portion of the California State Implementation Plan (SIP). We are proposing approval of five rules and a limited approval and limited disapproval of five rules. 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''). If finalized, this action will update the MDAQMD's current SIP with ten revised rules. We are taking comments

[4] The EPA also notes that nothing in the FARR or the proposed revisions restricts the exclusion of air quality monitoring data influenced by exceptional events as provided in 40 CFR 50.14.

on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before December 27, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0338 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: La Weeda Ward, Permits Office (Air–3–1), U.S. Environmental Protection Agency, Region IX, (213) 244–1812, *ward.laweeda@epa.gov.*

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

Table of Contents

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 adopted or amended by the MDAQMD, submitted by the California Air Resources Board (CARB) (the governor's designee for California SIP submittals), and approved by the EPA.

TABLE 1—RULES IN THE CURRENT SIP

Rule No.	Rule title	Adoption date	Submittal date	EPA action date	**Federal Register** citation
206—San Bernardino County.	Posting of Permit to Operate	[a] 02/01/1977	06/06/1977	11/09/1978	43 FR 52237.
206—Riverside County	Posting of Permit to Operate	02/06/1976	04/21/1976	11/09/1978	43 FR 52237.
219—San Bernadino County.	Equipment Not Requiring a Permit	[a] 02/01/1977	6/6/1977	11/9/1978	43 FR 52237.
219—Riverside County	Equipment Not Requiring a Written Permit Pursuant to Regulation II.	09/04/1981	10/23/1981	07/06/1982	47 FR 29231.
1300	General	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1301	Definitions	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1302	Procedure	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1303	Requirements	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1304	Emissions Calculations	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1305	Emission Offsets	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1306	Electric Energy Generating Facilities	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1402	Emission Reduction Credit Registry	06/28/1995	8/10/1995	01/22/1997	62 FR 3215.

[a] These rules were adopted by CARB Ex. Ord. G–73 on 2/1/1977 and substituted into the 6/6/1977 submittal to the EPA after the original adoption date of 1/9/1976 because the two versions were identical, and the earlier version was submitted on behalf of the SoCalAPCD (42 FR 1273).

B. What rules did the State submit?

Table 2 lists the rules addressed by this proposal with the dates they were adopted by the MDAQMD or predecessor agency and submitted by the CARB.

TABLE 2—SUBMITTED RULES

Rule No.	Rule title	Adopted date	Submitted date [a]
206	Posting of Permit to Operate	02/22/2021	10/15/2021
219	Equipment Not Requiring a Permit	01/25/2021	07/23/2021
1300	General	03/22/2021	07/23/2021
1301	Definitions	03/22/2021	07/23/2021
1302	Procedure	03/22/2021	07/23/2021
1303	Requirements	03/22/2021	07/23/2021
1304	Emissions Calculations	03/22/2021	07/23/2021
1305	Emission Offsets	03/22/2021	07/23/2021

TABLE 2—SUBMITTED RULES—Continued

Rule No.	Rule title	Adopted date	Submitted date [a]
1306	Electric Energy Generating Facilities	03/22/2021	07/23/2021
1402	Emission Reduction Credit Registry	05/19/1997	08/05/1997

[a] The submittal for Rules 219, 1300, 1301, 1302, 1303, 1304, 1305, and 1306 was transmitted to the EPA via a letter from CARB dated July 22, 2021, and received by the EPA on July 23, 2021. Rule 206 was transmitted electronically on October 15, 2021 as an attachment to a letter dated October 14, 2021. Rule 1402 was submitted on August 1, 1997 and received by EPA on August 5, 1997.

The EPA has promulgated specific procedural requirements for the completeness determination of SIP submissions pursuant to 40 CFR part 51, subpart F and Appendix V which must be met before formal EPA review. The completeness criteria pursuant to 40 CFR part 51 Appendix V were met as follows:

1. On January 23, 2022, the submittal of the MDAQMD Rules 219, 1300, 1301, 1302, 1303, 1304, and 1305 on July 23, 2021, was deemed complete by operation of law.

2. On April 15, 2022, the submittal of the MDAQMD Rule 206 on October 15, 2021, was deemed complete by operation of law.

3. On February 5, 1998, the submittal of Rule 1402 on August 5, 1997, was deemed complete by operation of law.

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

The rules listed in Table 2 are intended to replace the SIP-approved rules listed in Table 1. The submitted rules are intended to satisfy the minor NSR and non-attainment NSR (NNSR) requirements of section 110(a)(2)(C) and part D of title I of the Act, and the EPA's implementing regulations at title 40 of the Code of Federal Regulations (CFR) part 51, subpart I.[1] Minor NSR requirements are generally applicable for SIPs in all areas, while NNSR requirements apply only in areas designated as nonattainment for one or more National Ambient Air Quality Standards (NAAQS). The MDAQMD is currently designated Severe nonattainment for the 2008 and 2015 ozone NAAQS, and Moderate nonattainment for the 1987 PM_{10} NAAQS.[2] Therefore, the designation of MDAQMD as federal ozone and PM_{10} nonattainment areas triggered the requirement for the District to develop and submit an NNSR program to the EPA for approval into the California SIP.

[1] CARB, at the request of the District, also submitted a PSD rule for SIP inclusion (MDAQMD Rule 1600, ''Prevention of Significant Deterioration (PSD)''). We intend to take action on the District's PSD rule in a subsequent rulemaking.

[2] 40 CFR 81.305.

II. The EPA's Evaluation and Action

A. What is the background for this proposal?

On October 26, 2015, the EPA finalized a revised 8-hour NAAQS for ozone, which was lowered from 0.75 parts per billion (ppb) to 0.70 ppb.[3] On June 4, 2018, portions of the West Mojave Desert, under the jurisdiction of the MDAQMD, were designated as nonattainment for 2015 8-hour ozone NAAQS [4] and classified Severe-15.[5] This designation became effective on August 3, 2018. On December 6, 2018, the EPA finalized the implementation rule for the 2015 ozone NAAQS, which required the MDAQMD to submit a New Source Review (NSR) certification to the EPA by August 3, 2021.[6] The District's July 23, 2021 submittal is intended to satisfy this requirement.

B. How is the EPA evaluating the rules?

The EPA reviewed the rules listed in Table 2 for compliance with the CAA requirements as follows: (1) stationary source preconstruction permitting programs as set forth in CAA part D of title I, including CAA sections 172(c)(5), 173, 182(c)(6), and 182(d); (2) the review and modification of major sources in accordance with 40 CFR 51.160–51.165 as applicable in Severe ozone and Moderate PM_{10} nonattainment areas; (3) 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; (4) SIPs in general as set forth in CAA section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i); and (5) SIP revisions as set forth in CAA sections 110(l) and 193; and (6) the definition of ''stationary source'' pursuant to CAA section 302(z). We also evaluated the submittal for compliance with the NNSR requirements applicable to Severe ozone and Moderate PM_{10} nonattainment areas and ensured that the submittal addressed the NNSR requirements for the 2008 and 2015 ozone NAAQS.

[3] 80 FR 65292.

[4] Both the 1979 1-hour ozone standard and the 1997 8-hour ozone standard are revoked in most areas of California including in the MDAQMD jurisdiction. Footnote 4 in 40 CFR 81.305 states: ''The 1-hour ozone standard is revoked effective June 15, 2005, for all areas in California. The Monterey Bay, San Diego, and Santa Barbara-Santa Maria-Lompoc areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.'' The 1997 Ozone standard was revoked with the implementation of the 2008 Ozone standard (see 80 FR 12263, March 6, 2015), however the preamble makes the following distinction: ''After revocation of the 1997 standard, the designations (and the classifications associated with those designations) for that standard are no longer in effect, and the sole designations that remain in effect are those for the 2008 ozone NAAQS. However, the EPA is retaining the listing of the designated areas for the revoked 1997 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation. Accordingly, such references to historical designations for the revoked standard should not be viewed as current designations under CAA section 107(d).'' It is also important to note that most of the SIP elements per the 2008 Ozone NAAQS are included in the plan elements per the 2015 Ozone NAAQS. The list of anti-backsliding provisions required for areas transitioning from the 1997 Ozone standard to the 2008 Standard are codified at 40 CFR 51.1105.

[5] 83 FR 25776. A classification of Severe-15 under the 2015 Ozone NAAQS is an area with a design value of 0.105 up to but not including 0.111 ppm.

[6] 83 FR 62998.

C. Do the rules meet the evaluation criteria?

The EPA has reviewed the submitted rules listed in Table 2 in accordance with the rule evaluation criteria described in Section II.B of this notice.

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. Based on our review of the public process documentation included for the rules listed in Table 2, we find that the MDAQMD has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of these rules to the EPA.

With respect to the substantive requirements found in part D of title 1 of the Act (including sections 172, 173, 182(c), and 182(d)); part A of title 1 of the Act (including sections 110(a)(2) and 110(a)(2)(E)(i)); section 302(z) contained in title III the Act; and 40 CFR 51.160–51.165 and 51.307, we have determined that the submitted District

Rules 206, 219, 1300, 1306, and 1402 meet the evaluation criteria, while District Rules 1301, 1302, 1303, 1304, and 1305 mostly meet the criteria but contain deficiencies as detailed in Section II.D.

D. What are the rule deficiencies?

The EPA identified six deficiencies in the rules proposed for inclusion in the SIP. The first deficiency is the use of the term ''contract'' as interchangeable with the term ''permit.'' Specifically, the MDAQMD Rules 1302(D)(6)(a)(iii) and 1304(C)(4)(c) allow 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 use of the terms ''ATC'' and ''PTO'' refer to written ''permits'' in SIP-approved Rules 201, 202, and 203 [7] and hence are the basis for enforceable mechanisms to implement the NSR program in the District. We find the term ''contract'' is 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) is not approvable as a SIP revision.

The second deficiency is the calculation procedures specified to determine the amount of offsets required in certain situations. Specifically, the requirements at 40 CFR 51.165(a)(3)(ii)(J) state that the total tonnage of increased emissions resulting from a major modification 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. In other words, federal regulations require an ''actual-to-potential'' test using a baseline of actual emissions when determining the amount of offsets required for a project. Rule 1304 allows a potential-to-potential test for calculating the quantity of offsets required in some situations. Specifically, the calculation procedures for Simultaneous Emission Reductions (SERs) at Rule 1304(C)(2)(d), applies a potential-to-potential test under certain circumstances.[8] Rule 1304 uses a potential-to-potential test for calculating the quantity of SERs that can be used as offsets for a ''Modified Major Facility.'' Pursuant to Rule 1304(C)(2)(d), SERs at a Modified Major Facility are calculated using the potential to emit (PTE) in place of Historic Actual Emissions (HAE). Calculating emissions decreases using a potential emissions baseline allows reductions ''on paper'' that do not represent real emissions reductions. Under CAA section 173(c)(1), such paper reductions cannot be used to offset actual emission increases. 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.[9] The District has not made any demonstration showing how the methodology in these rules is as stringent as the requirements of 40 CFR 51.165(a)(3)(ii)(J) and section 173(c)(1) of the Act. Furthermore, the allowance of the potential-to-potential test does not conform with the requirements of 40 CFR 51.165(a)(1)(vi)(E)(1), which states that ''[a] decrease in actual emissions is creditable only to the extent that the old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions.'' Also, the calculation method in Rule 1304(C)(2)(d) allows a source to appear as if it is not undergoing a modification as defined under Rule 1301(NN). In this scenario, a facility could circumvent the requirement to offset emissions increases if potential emissions increases from a project are negated by contemporaneous emissions decreases that utilize SERs calculated using a potential-to-potential test. We describe a related deficiency in the discussion of the ''third deficiency'' below. Thus, the provisions in Rule 1304(C)(2)(d) are inconsistent with the requirements of 40 CFR 51.165(a)(3)(ii)(J) and section 173(c)(1) of the Act. As described in the Technical Support Document (TSD), which can be found in the docket for this rulemaking, the deficiency identified in Rule 1304, through cross-references, also causes related deficiencies in Rules 1301, 1302, 1303, and 1305.

The third deficiency pertains to the definitions for ''Major Modification'' and ''Modification (Modified)'' pursuant to Rule 1301(NN) and 1301(JJ), respectively. We noted in the discussion of the second deficiency above that the methodology to determine the amount of offsets is deficient because it allows the use of SERs pursuant to Rule 1304. 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 increases'' at any given facility. The combined effect of calculating SERs according to Rule 1304 and the District's procedure for determining a net emissions increase could allow a facility to subtract SERs, which can be paper reductions, from a proposed emission increase. This could result in an emission increase that is less than zero. The definition of ''Modification (Modified)'' excludes modifications that do not result in a ''Net Emissions Increase,'' which is defined in Rule 1301(QQ) as: ''An emission change as calculated pursuant to District Rule 1304(B)(2) which exceeds zero.'' If there is no net emissions increase, as defined in Rule 1301(QQ) and Rule 1304(B)(2), a permit applicant can avoid NSR requirements entirely (*i.e.,* BACT, offsets, visibility, etc.) because it can effectively exclude the proposed project from being considered a ''Modification'' and hence a ''Major Modification,'' using calculation procedures that do not conform to the federal definition for 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). Thus, the definitions for both ''Major Modification'' and ''Modification (Modified)'' are deficient because they result in non-conformance with these aforementioned federal requirements.

The fourth deficiency is the definition of Historical Actual Emissions (HAE) pursuant to Rule 1304(D)(2)(a)(i). Rule 1304(D)(2)(a)(i) states, ''The verified Actual Emissions of an Emissions Unit(s), averaged from the two-year period which immediately *proceeds* the date of application, and which is representative of Facility operations . . .'' (emphasis added). While this appears to be a typographical error, it is a deficiency because it states it is the actual emissions averaged from the 2-year period that immediately proceeds the date of application. The actual emissions must be based on emissions emitted preceding the date of application. This deficiency may be corrected by replacing the word ''proceeds'' with ''precedes'' in MDAQMD Rule 1304(D)(2)(a)(i).

The fifth deficiency pertains to the use of interprecursor trading (IPT). Specifically, Rule 1305 section (C)(6) allows IPT between nonattainment pollutants and their precursors on a case-by-case basis. A footnote to this

[7] Rule 201, ''Permit to Construct,'' Rule 202, ''Temporary Permit to Operate,'' and Rule 203, ''Permit to Operate'' were approved into the California State Implementation Plan by the EPA on 11/9/1978, 43 FR 52237.

[8] Rule 1301(OOO) provides the definition of SER.

[9] 40 CFR 51.165(a)(1), 51.165(a)(2)(ii).

section states: ''Use of this subsection [is] subject to the Ruling in *Sierra Club* v. *USEPA* (D.C. Cir. Case #15–1465, 1/29/2021), Document #1882662 and subsequent guidance by USEPA.'' On January 29, 2021, the D.C. Circuit Court of Appeals in *Sierra Club* v. *EPA,* 21 F.4th 815, vacated provisions of the 2018 Implementation Rule that allowed IPT for the ozone precursors VOC and NO_X.[10] We note that the EPA recently revised its NNSR regulations at 40 CFR 51.165(a)(11) to make them consistent with the Court's decision,[11] thus the provision in section (C)(6) of Rule 1305 allowing for IPT for ozone precursors is no longer permissible and must be revised to make clear that IPT is not permissible for ozone precursors.

The sixth deficiency pertains to our evaluation of Rules 1300, 1301, 1302, 1303, 1304, and 1305 against the criteria contained in Clean Air Act sections 182(c)(6) and 182(d).[12] Section 182(c) of the Act, which was added by the Clean Air Act Amendments of 1990, details the plan submission and requirements for Serious non-attainment areas. Specifically, CAA section 182(c)(6) contains the ''De Minimis Rule,'' which states NSR rules ''shall ensure 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 Act 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.'' Our evaluation of Rules 1300, 1301, 1302, 1303, 1304, and 1305 against the criteria contained in CAA sections 182(c)(6), and 182(d) shows the District rules are deficient as they do not contain de minimis SIP requirements. This deficiency may be corrected by incorporating de minimis SIP requirements pursuant to CAA section 182(c)(6) in the applicable Regulation XIII nonattainment NSR rule(s).

Our TSD contains a more 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.

E. EPA Recommendations To Further Improve the Rules

The TSD also includes recommendations for additional clarifying revisions to consider for adoption when the MDAQMD next amends Rules 1301, 1302, 1303, 1304, and 1305.

F. Proposed Action and Public Comment

The EPA is proposing approval of MDAQMD Rules 206, 219, 1300, 1306, and 1402 as authorized under Section 110(k)(3) of the Act. In addition, as authorized in sections 110(k)(3) and 301(a) of the Act,[13] we are proposing 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 contain deficiencies as discussed in Section II.D of this notice.

We have concluded that our proposed action will 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. In addition, our proposed action will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of ozone and its precursors and PM_{10} and its precursors in the District.

If finalized, this action would incorporate into the SIP the submitted rules listed in Table 2 for which we have proposed approval or limited approval/limited disapproval, codified through revisions to 40 CFR 52.220 (Identification of plan—in part), including those provisions identified as deficient. Our proposed approval of Rules 1301, 1302, 1303, 1304, and 1305 is limited and the EPA is simultaneously proposing a limited disapproval of Rules 1301, 1302, 1303, 1304, and 1305 pursuant to CAA section 110(k)(3) and 301(a).

In conjunction with our SIP approval of the District's visibility provisions for major sources subject to review under the NNSR program, we also propose to revise 40 CFR 52.281(d) regarding applicability of 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 MDAQMD. Approval of the District's visibility provisions under 40 CFR 51.307 would mean that this FIP is not needed to satisfy the CAA visibility requirements at 40 CFR 51.307 for sources subject to the District's NNSR program. This revision will clarify the application of this FIP in California following our final action.

If we finalize this action as proposed, our limited disapproval actions would trigger an obligation on the EPA to promulgate a Federal Implementation Plan (FIP) unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of the final action. Additionally, for the deficiencies that relate to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the West Mojave Desert [14] 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Section 179 sanctions will not be imposed under the CAA if the State submits, and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies that we identify in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

We will accept comments from the public on this proposal until December 27, 2022.

III. Incorporation by Reference

In this rule, 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 listed in Table 1 of this preamble. These rules 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''). The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER**

[10] 83 FR 62998 (December 6, 2018).

[11] 86 FR 37918 (July 19, 2021).

[12] Section 182(d), also added by the Clean Air Act Amendments of 1990, details plan submission requirements for Severe non-attainment areas and includes all the provisions under section 182(c) for Serious non-attainment areas. Therefore, an analysis against CAA section 182(c)(6) constitutes an analysis against section 182(d).

[13] 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.

[14] The CAA section 179 sanctions will not extend to the portion of the MDAQMD that is in Riverside County known as the Palo Verde Valley in California.

INFORMATION CONTACT section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.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

The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

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: November 4, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–25382 Filed 11–23–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 705

[EPA–HQ–OPPT–2020–0549; FRL–7902–04–OCSPP]

RIN 2070–AK67

TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances; Notice of Data Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and soliciting comment on an Initial Regulatory Flexibility Analysis (IRFA) and Updated Economic Analysis following the completion of a Small Business Advocacy Review (SBAR) Panel for the Toxic Substances Control Act (TSCA) proposed rule for reporting and recordkeeping requirements for per- and polyfluoroalkyl substances (PFAS). The EPA seeks public comment on all aspects of the IRFA and Updated Economic Analysis, including underlying data and assumptions in developing its estimates, as well as on certain items presented in the IRFA for public comment and related to the protection of Confidential Business Information.

DATES: Comments must be received on or before December 27, 2022. December 27, 2022

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0549, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Stephanie Griffin, Data Gathering and