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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 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. The 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.'' The 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.''

The District 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. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goals of Executive Order 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 August 29, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, 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 adding paragraph (c)(505)(ii)(A)(*2*) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(505) * * *

(ii) * * *

(A) * * *

(*2*) Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) for the 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) (''Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Analysis''), as adopted on September 13, 2017, except the RACT determination for non-CTG major sources of NO_X.

* * * * *

■ 3. Section 52.237 is amended by adding paragraph (b)(6)(ii) to read as follows:

§ 52.237 Part D disapproval.

* * * * *

(b) * * *

(6) * * *

(ii) RACT determination for non-CTG major sources of Nitrogen Oxides (NO_X) for the 2008 ozone NAAQS, as contained in the submittal titled ''Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Analysis for the 2008 Federal Ozone Standard,'' as adopted on September 13, 2017, and submitted on November 13, 2017.

* * * * *

[FR Doc. 2023–13754 Filed 6–29–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0338; FRL–10269–02–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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an approval and a limited approval and limited disapproval of revisions to the Mojave Desert Air Quality Management District (MDAQMD 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 ten 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 July 31, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0338. All documents in the docket are listed on the *https://www.regulations.gov* website. 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: 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.

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I. Proposed Action

On November 25, 2022 (87 FR 72434), the EPA proposed approval of five rules and a limited approval and limited disapproval of five 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, while Table 2 shows the rules that the State submitted for inclusion in the California SIP.[1]

TABLE 1—RULES TO BE REMOVED OR SUPERSEDED

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 California Air Resources Board (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 Southern California Air Pollution Control District (SoCalAPCD) (42 FR 1273).

TABLE 2—SUBMITTED RULES

Rule No.	Rule title	Amended 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	New Source Review General	03/22/2021	07/23/2021
1301	New Source Review Definitions	03/22/2021	07/23/2021
1302 [b]	New Source Review Procedure	03/22/2021	07/23/2021
1303	New Source Review Requirements	03/22/2021	07/23/2021
1304	New Source Review Emissions Calculations	03/22/2021	07/23/2021
1305	New Source Review Emission Offsets	03/22/2021	07/23/2021
1306	New Source Review for 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 the EPA on August 5, 1997.

[b] As we stated in section 5.9.1 of our technical support document (TSD), the State did not submit for inclusion in the SIP subsections (C)(5) and (C)(7)(c) of Rule 1302.

In our proposal, we proposed approval of Rules 206, 219, 1300, 1306, and 1402 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, and 1305 because although they fulfill most of the relevant CAA requirements and strengthen the SIP, they also contain six 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] In the incorporation by reference (IBR) section of our proposed action (87 FR 72434) inadvertently refers to Table 1 as opposed to Table 2 for the list of submitted rules that are intended to replace the rules in the SIP. However, we explain in Section C of our proposed rulemaking that ''the rules listed in Table 2 are intended to replace the SIP-approved rules listed in Table 1.'' We also state in Section F of our proposed rulemaking that, ''[i]f 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 . . .''

[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.

1. The use of the term ''contract'' in the District's rules as interchangeable with the term ''permit'' is a deficiency because, as used in the specific contexts we identified in our proposed action, the term ''contract'' is not an acceptable alternative to the term ''permit.''

2. The calculation procedures used in the District's rules to determine the amount of offsets required in certain situations do not comply with CAA section 173(c)(1) or 40 CFR 51.165(a)(3)(ii)(J) or (a)(1)(vi)(E). Rule 1304 uses a potential-to-potential test for calculating the quantity of ''simultaneous emission reductions'' (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 potential emissions as the baseline allows reductions ''on paper'' that do not represent real emissions reductions. The deficiency in Rule 1304, through cross-references, also causes related deficiencies in Rules 1301, 1302, 1303, and 1305.

3. The definitions for ''Major Modification'' and ''Modification (Modified)'' pursuant to Rule 1301(NN) and 1301(JJ), respectively, are deficient because they do not conform with Federal requirements. 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.,* best available control technology (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*).

4. The District's use of the term ''proceed'' in Rule 1304 is a deficiency because the word ''precede'' (or a synonym of ''precede'') should be used.

5. The provision in Rule 1305 allowing for interprecursor trading (IPT) for ozone precursors is a deficiency because IPT is no longer permissible.

6. The District 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]

As discussed in our proposal, this action is consistent with CAA sections 110(l) and 193. It will not relax any existing SIP provision, and it will not interfere with applicable attainment and reasonable further progress requirements or other applicable CAA requirements. This action will not relax any pre-November 15, 1990 requirements in the SIP, and therefore changes to the SIP resulting from this action will ensure greater or equivalent emissions reductions of ozone and its precursors and PM_{10} and its precursors in the District.

Finally, we proposed to approve, under 40 CFR 51.307, the District's visibility provisions for sources subject to the District's nonattainment new source review (NNSR) requirements. Accordingly, we also proposed to revise 40 CFR 52.281(d) to add the District to the list of areas not subject to the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28, to clarify that the FIP does not apply to the District.

The EPA's proposal and technical support document (TSD) for this action have more information and analysis on the District's submittal, the deficiencies, and our proposed approvals.

II. Public Comments and EPA Responses

The public comment period on the proposed rule opened on November 25, 2022, the date of its publication in the **Federal Register**, and closed on December 27, 2022. During this period, the EPA received one comment letter submitted by the Mojave Desert Air Quality Management District (MDAQMD or the ''District''). A copy of the District's comment letter is included in the docket for this action and is accessible at *www.regulations.gov.* In this section, we provide a summary of and response to the MDAQMD's comments.

Comment #1: The District states that portions of the EPA's proposed action are inopportune. The District states that the EPA did not communicate with its staff on any substantive issues during its evaluation of CARB's submittal of the District's revisions to its NSR program despite previously working with its staff to address identified deficiencies from a prior submittal. The District states that the only communication it received from the EPA after adopting rule revisions were requests for copies 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 July 23, 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.[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

[3] CAA Section 182(d), which was 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.

[4] 87 FR 72434 (November 25, 2022). Technical Support Document, page 11. The December 19, 2019 letter, from Lisa Beckham to Brad Poiriez, which the District mentions in footnote 17 of its comment letter, follows our October 10, 2019 letter from Gerardo Rios, Manager, Air Permits Office, EPA Region IX, to Brad Poiriez, Air Pollution Control Officer, MDAQMD, in which we provided feedback in response to the MDAQMD's invitation to review and comment on the District's proposed adoption of its ''70 ppb Ozone Standard Implementation Evaluation: RACT SIP Analysis; Federal Negative Declarations; Certification of Nonattainment New Source Review Program; and, Emission Statement Certification (70 ppb O3 Evaluation).'' In the October 10, 2019 letter, we stated that we would send a comprehensive list of issues to ''provide the District sufficient time to adopt the necessary rule revisions and make a new NSR submittal to meet the implementation requirements of the 2015 ozone NAAQS [national ambient air quality standards].''

rules and a fully approved NSR program.

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.

Comment #2: 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 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, but states 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 that the EPA officially acknowledge that Rules 201, 202, 203, and 204 are part of District's NSR Program.

Response to Comment #2: The EPA acknowledges that SIP-approved Rules 201, 202, 203, and 204 are part of the District's SIP-approved NSR program and clarifies that the purpose of Table 1 in our proposed action and Table 2 in the TSD is to present the submitted rules and the current SIP-approved versions of the submitted rules.

Comment #3: 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 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 #3: 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.[5] Our proposed action and the TSD cite to specific provisions in the CAA and its implementing regulations in 40 CFR part 51 that form the basis for the EPA's disapproval of specific 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.[6] These revisions included the addition of 40 CFR 51.165(a)(3)(ii)(J). As we discuss in this document and 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.[7] 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 based on the difference between pre-modification actual emissions and post-modification PTE.[8] Our responses to Comments 5 and 6 below provide additional explanation of this issue. The EPA's interpretation of this provision is reasonable and is consistent with our actions regarding other submittals of NSR rules for SIP approval.[9]

Comment #4a (Inaccuracies regarding Rule 219): The District states that the EPA's TSD contains inaccuracies and misstatements regarding MDAQMD Rule 219. The District states that the EPA's statement in the TSD that Rule 219 exempts certain emission units from NSR is ''manifestly untrue.'' 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)(4) to support its position that Rule 219 requires emissions from exempt equipment to be included in NSR calculations. The District further states that while Rule 219 exempts certain emissions units from obtaining ''paper'' permits, it does not exempt emissions units or an entire facility containing such units from other District requirements, such as specific emissions limits and monitoring, recordkeeping, and source testing requirements, as well as the requirement to undergo at least a portion of the NSR analysis as set forth in Rule 1302, among others.

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 #4a (Inaccuracies regarding Rule 219): The EPA proposed to fully approve Rule 219 as amended on January 25, 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; rather, the EPA understands the District's comment to take issue with a statement in section

[5] See 87 FR 72436–38; TSD Sections 5–10.

[6] 67 FR 80185 (December 31, 2002).

[7] We explained in our TSD that the calculation of the offset quantity to use an actual emissions baseline is applicable to offsets that are being used to allow construction of new major sources or major modifications. The District can offset its minor sources and minor modifications differently than the required methods specified for major sources and major modifications.

[8] See, *e.g.,* ''Response 4,'' 81 FR 50339, 50340 (August 1, 2016).

[9] 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 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).

5.7 of our TSD, specifically, that Rule 219 ''is a rule that specifies which sources are exempt from the New Source Review program for regulated NSR pollutants.'' [10] We agree that this statement warrants clarification that we determined the District's NSR program requires a facility-level review of emissions from a proposed project, including emissions from equipment otherwise exempt from permitting requirements, and that Rule 219 is consistent with 40 CFR 51.160(e), which allows states to exclude some sources from NSR requirements (*i.e.,* lowest achievable emission rate (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.

The District's comment refers 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.[11] 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 #4b (Use of the term ''contract''): 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 #4b (Use of the term ''contract''): 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 #5: Regarding the second deficiency the EPA identified in the proposed rulemaking, the calculation procedures the District uses to determine the amount of offsets required in certain situations, the District first states that the EPA partially mischaracterizes Rule 1304(C)(2)(d) as a ''potential to emit to new potential to emit after modification'' calculation. According to the District, this provision is more correctly characterized as ''current fully offset allowable emissions'' to ''potential new emissions.'' The District further states that the provision was intended to only be used to reduce the amount of offsets needed as opposed to a determination of whether offsets are required. The District also states that the structure of its NSR regulation is designed to ensure that emissions reductions are greater than those required by the Federal CAA provisions, and to meet specific requirements of the California Clean Air Act and states that the de minimis provisions in CAA section 182 could result in increased emissions. The District states that the provision allowing for the use of SERs has been in active use within the District since 1993, and that over that time, the number and extent of NAAQS exceedances has declined within its jurisdiction despite significant increases in economic activity and population. Therefore, the District states, the decline in NAAQS exceedances would not have occurred if its NSR program was not achieving reductions at least as stringent as those under strict CAA methodology. The District also states that ''it has provided clear and convincing evidence in its Staff Report and elsewhere that the entire NSR Program as formulated requires not only BACT but also Offsets in a number of situations where they would not be required under a strict [Federal] CAA calculation methodology thus resulting in a more stringent set of requirements overall.'' The District states that, despite its assertion of the adequacy of the current SIP submission, it would appreciate specific guidance regarding the type and nature of evidence the EPA would consider appropriate to show equivalent stringency with the requirements of the CAA.

Response to Comment #5: The EPA does not agree with the District's comment. 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 District Rule 1304.'' [12] 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.'' [13] 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.

[10] 87 FR 72434 (November 25, 2022). Technical Support Document, ''Notice of Proposed Rulemaking Revisions to the California State Implementation Plan, MDAQMD, NSR Rules 206, 219, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1402.'' Page 13.

[11] See, ''Email Communication between Gerardo Rios (EPA) and Brad Poiriez (District) on 3/28/2019,'' Docket No. C.12, expressing concerns with a previous version of Rule 219 that is not the subject of this rulemaking. (We have since corrected the inadvertent omission of portions of document C.12 from the docket and we note that substantive portions of document No. C.12 were included in a different document, ''Spreadsheet of identified deficiencies and changes made discussed during 11/17/20 Working Group Call with representatives from EPA, the District and CARB,'' Docket No. C.15.) As we discussed in our proposed rule, and TSD section 5.7 and TSD Attachment 3, we found that Rule 219 as revised on January 25, 2021, and submitted to the EPA on July 23, 2019, to be consistent with CAA requirements.

[12] Rule 1303(B)(1). See also, EPA TSD at 17. Rule 1303(A) specifies control obligations, *i.e.,* Best Available Control Technology.

[13] Rule 1304(A). In addition, Rule 1304 sets forth ''procedures and formulas'' to calculate BACT obligations. See Rule 1304 (A)(1)(a)(i). See also, EPA TSD at 17–18.

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),[14] whereas the CAA requires a pre-project baseline based on actual emissions.[15] 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 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: 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.[16]

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 District's assertion that 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.[17] 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 increases above actual emissions.

A real-world example that illustrates how the District's rules are less stringent than Federal requirements is a modification project reviewed by the District to upgrade three existing natural gas-fired combustion turbines at a power plant. The District'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 tons per year (tpy) to 103.9 tpy.[18] The District's analysis also presents the ''pre-modification PTE'' of NO_X as 205 tpy. The District's analysis states that the ''post-modification PTE'' of NO_X is 204.5 tpy.[19] Per the EPA's requirements, the required quantity of offsets for this project would be approximately 131 tpy (204.5 tpy minus the highest emissions rate of 103.9 tpy, multiplied by 1.3 for Severe nonattainment areas, as required under CAA section 182(d)(2)). Per the District's rules, however, the required quantity of offsets calculated is minimal because there is virtually no difference between pre-project allowable emissions and post-project allowable (*i.e.,* potential) emissions (in fact, the District's analysis indicates a 0.55 tpy decrease in emissions resulting from the project).[20]

[14] 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, the terms ''allowable'' and ''potential'' are generally interchangeable.

[15] We note that District's comment includes the following incorrect statement, ''Specifically, 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.''

[16] 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].

[17] Relatedly, Rule 1304(C)(d)(2) allows the use of allowable (*i.e.,* potential) emissions if the unit's emissions ''have been previously offset in a documented permitting action,'' but does not specify a timeframe for such previous permitting actions, which is inconsistent with Rule 1304(B)(2)(c)'s provision that SERs must occur ''at the same time or in connection with the same permitting action.'' The District's Staff Report also states, on pages 44–45: ''If the Facility has fully offset Emissions Units it may in effect 'reuse' its previously provided offsets in a different capacity.'' CAA sections 173(a)(1)(A) and 173(c) and EPA's NSR regulations, however, do not allow facilities to use the same emissions reductions more than once; if a facility relies upon emissions reductions for a prior NNSR action, under 40 CFR 51.165(a)(3)(ii)(G), they are not eligible for use again in a future NNSR permit action.

[18] 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.

[19] 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.

[20] 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 project was analyzed as a modification under the Federal PSD program, which uses the 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.

Regarding the District's statement that ''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 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.[21] 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.[22]

The District also states that Rule 1304(C)(2)(d) is intended to be used only to reduce the amount of offsets needed as opposed to a determination of whether offsets are required. This statement, however, appears to be a distinction without a difference. For example, any scenario in which the District's calculation of the amount of offsets required is zero (as in the real-world example described above) is tantamount to a determination that no offsets are required.

The District asserts ''that it requires Best Available Control Technology (BACT) and offsets in more cases and on a greater number of Emissions Units'' than the CAA requires. The District, however, provides no demonstration to support this claim, nor does the District provide any basis on which EPA could find that the District's NSR program ensures equivalency with Federal offset requirements.[23] 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 as stringent as Federal requirements. For example, Table 4 of the Staff Report compares BACT and offset requirements, but the information does not demonstrate how implementation of the District's NSR program is imposing an equivalent quantity of offsets.[24] 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.

The District also asserts that the EPA previously approved the provision we now find deficient and that, since 1993, 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 as stringent as 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.,* reasonably available control technology (RACT), reasonably available control measure (RACM), and best available control measure (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 the District is currently classified as Severe nonattainment for the 2008 and 2015 NAAQS; therefore, the CAA requires the District to implement rules consistent with Federal nonattainment NSR requirements at CAA section 173 and 40 CFR 51.165.

We address MDAQMD's point regarding the De Minimis provisions at CAA 182(c)(6) in response to Comments 9 and 10 below.

Comment #6: The District disagrees with the EPA's proposed disapproval of Rule 1301's definitions of the terms ''Major Modification'' and ''Modification (Modified).'' The District summarizes the EPA's concern that these terms allow the use of reductions from previously offset emissions units as SERs in such a way that a source might avoid entirely offset requirements. The District states that the EPA is correct that the Net Emissions Increase calculation under Rule 1304(B)(2)(c) includes SERs, but that the EPA failed to consider that Rule 1302 ''very clearly sets out a flow for analysis in which one step occurs after another in sequence,'' referring to the ''Final NSR Staff Report.'' The District also states that the EPA also failed to consider 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 have been in active use since 1993 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 #6: The EPA disagrees with the District's assertions that the EPA's proposed disapproval of Rule 1301's definitions for ''Major Modification'' and ''Modification (Modified),'' is incorrect. We note that Rule 1301 defines both terms using the term ''Net Emissions Increase,'' and, as explained in our proposed action, Rule 1301(QQ) defines the term ''Net Emissions Increase'' as an emission increase calculated per Rule 1304(B)(2) that exceeds zero.[25] 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.'' [26] As noted in our proposed action and in our response to Comment 5, Rule 1304(C)(2)(d) allows permit applicants to calculate a net

[21] 87 FR 72434, 72437. We identified several District rules as not fully approvable because they do not ensure compliance with Federal regulations for calculation of required offsets, stemming from cross-references to Rule 1304(C)(2)(d). See, *e.g.,* TSD Table 4, ''Summary of Deficiencies Due to Cross References.''

[22] 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.

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

[24] MDAQMD Staff Report p. 38–40.

[25] 87 FR 72434, 72437.

[26] Rule 1304(B)(2)(c).

emissions increase using allowable (*i.e.,* potential) emissions as the pre-project baseline, rather than actual emissions, as required by the EPA's regulations.[27] As we have explained in our response to Comment 5 above, 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 the pre-project baseline (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 [28] at subsection (A), and subsections (A)(2) and (A)(3) impose BACT requirements through the use of the term ''Modified,'' defined at Rule 1301(NN).[29] As we explained in our proposed action, Rule 1301(NN) defines ''Modified'' in terms of whether a project will result in a ''Net Emissions Increase.'' [30] As a result, a project that does not result in a ''Net Emissions 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 Emissions Increase,'' to impose this requirement.

Similarly, Rule 1303(B)(2) imposes offset requirements using the term ''Major Modification,'' which is defined at Rule 1301(JJ). Rule 1301(JJ) defines ''Major Modification'' using the term ''Net Emissions Increase.'' [31] 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 Emission 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 1600.[32] 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 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.[33] 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.'' [34] 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.'' [35] 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 statement that it has been using the provisions at issue ''since 1993 with demonstrable results in overall 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(NN), 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

[27] 40 CFR 51.165(a)(2).

[28] We acknowledge that the District's definition of Best Available Control Technology in Rule 1301(J) is consistent with the definition of ''lowest achievable emission rate'' in CAA section 171(3) and 40 CFR 51.165(a)(1)(xiii).

[29] Rule 1303(A)(2) and (A)(3) use the term ''Modified Permit Unit''; Rule 1301 separately defines the terms ''Modification (Modified)'' at subsection (NN) and ''Permit Unit'' at subsection (AAA).

[30] 87 FR 72437.

[31] Rule 1301(JJ) refers to a ''Significant Net Emissions Increase''; Rule 1301 separately defines ''Significant'' at subsection (NNN) and ''Net Emissions Increase'' at subsection (QQ).

[32] 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 1600.''

[33] 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.''

[34] Id. at 3.

[35] Id. at 4.

methodologies, including Rule 1304(C)(2)(d). As we described in our response to Comment 5, the District determined that a project did not trigger BACT because there was no net emissions increase and therefore the facility was not ''Modified'' as defined in Rule 1301(NN). It appears that the District used the SERs-related provisions of 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.[36] We note that such a conclusion appears inconsistent with Rule 1303(A)(4), but apparently resulted from the ambiguities in Rules 1301, 1302, 1303, and 1304 described above. Under the District's submitted NSR program, 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 ''Modification (Modified)'' and ''Major Modification'' in Rule 1301(QQ) and (NN) are deficient.

Comment #7: Regarding the EPA's fourth identified deficiency, the use of the word ''proceed'' in the definition of ''Historic Actual Emissions,'' 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 way 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: 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 #8: 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,* which 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.''[37] On July 19, 2021, the EPA removed the ozone interprecursor trading provisions in 40 CFR 51.165(a)(11).[38]

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 prohibiting the use of interprecursor trading to satisfy offset obligations.[39] 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 #9: 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 notes that the previous version of Rule 1303, as amended on September 24, 2001, contained a provision that satisfied this requirement, but that it removed the provision from the current version because it was unworkable. 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 750 tons per year. The District asserts that its removal of the ''de minimis'' provision from Rule 1303 strengthens the rule and results in its NSR program being more stringent than the CAA requirements. The District also states that, despite its assertion of the adequacy of the current submissions, it requests specific guidance regarding the

[36] The District's analysis of 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 NO_X [nitrogen oxides], VOC [volatile organic compounds], or PM_{10} [particulate matter], 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).

[37] See, *Sierra Club* v. *EPA,* 21 F.4th 815, 819–823 (D.C. Cir. 2021).

[38] 86 FR 37918 (July 19, 2021).

[39] The footnote attached to Rule 1305 states: ''Use of this section 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.''

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 #9: 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.[40] 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 increases is greater than 25 tons, the particular change is subject to the area's SIP-approved NNSR program, according to the plain text of CAA section 182(c)(6).

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).[41] 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 750 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 greater than 25 tons without offsetting them.

The District does not explain how the ''no net increase'' requirement of California Health and Safety Code section 40918(a)(1), which it references in footnote 73 of its comment letter, conflicts with the ''De Minimis'' requirements. 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 five 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 occurring within a five-year time frame exceed the 25 tpy 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 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 groups of emission units), would show that each set of rules is more and less stringent than the other in some cases. As we discussed in our responses to Comments 5 and 6, 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 5 and 6 also describe the District'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. 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 five-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

[40] Nonattainment area classifications for the ozone NAAQS are established under CAA section 181.

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

the quantity of offsets required for significant emission increases.[42]

The District 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''; however, 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.[43] 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 that cite Rule 1304(C)(2) is overbroad. The District states that the EPA has indicated that it is proposing to disapprove MDAQMD 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 reduction 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 parts per billion (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 also 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 District 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 of this document for which we are fully approving or finalizing a limited approval/limited disapproval, including those provisions we identified as deficient.

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 206, 219, 1300, 1306, and 1402. 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, and 1305. This action incorporates submitted Rules 206, 219, 1300, 1301, 1302, 1303, 1304, 1305, 1306, and 1402 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, and 1305.

As a result of our limited approval and limited disapproval of Rules 1301, 1302, 1303, 1304, and 1305, the EPA must promulgate a Federal implementation plan (FIP) under section 110(c) for the West Mojave Desert nonattainment area portion of the District within 24 months unless we approve subsequent SIP revisions that correct the deficiencies identified in this action. In this instance, we note that the EPA already has an existing obligation to promulgate a FIP for any NSR SIP elements that we have not taken final action to approve.[44] 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 District 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.[45] The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and in hard copy

[42] 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 5 and 6 above.

[43] See 87 FR 72437–38; TSD p. 8–9.

[44] The FIP obligation originates from our February 3, 2017 finding that the District failed to submit a Nonattainment NSR SIP for the 2008 8-hour ozone NAAQS by the required submittal deadline. This finding of failure to submit established a FIP obligation deadline of March 6, 2019. See also, *CBD* v. *Regan,* N.D. Cal. 22–cv–3309.

[45] In the IBR section of our proposed action (87 FR 72434) we inadvertently referred to Table 1 as opposed to Table 2 for the list of submitted rules that are intended to replace the rules in the SIP. However, we explained in Section C of our proposed action that ''the rules listed in Table 2 are intended to replace the SIP-approved rules listed in Table 1.'' We also stated in Section F of our proposed action that, ''[i]f 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 . . . .''

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 E.O. 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 August 29, 2023. 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 16, 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 (c)(31)(vi)(G) and (H), (c)(32)(iv)(G), (c)(39)(ii)(K) and (L), (c)(39)(iv)(K), (c)(68)(iii) and (iv), (c)(70)(i)(E), (c)(87)(iv)(B), (c)(103)(xviii)(C), (c)(155)(iv)(C), (c)(224)(i)(C)(*3*), (c)(239)(i)(A)(*4*), and (c)(248)(i)(D)(*3*);
■ b. Adding reserved paragraphs (c)(598) and (599); and
■ c. Adding paragraphs (c)(600) and (601).

The additions read as follows:

§ 52.220 Identification of plan—in part.

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(c) * * *

(31) * * *

(vi) * * *

(G) Previously approved on November 9, 1978, in paragraph (c)(31)(vi)(C) of this section and now deleted with replacement in paragraph (c)(601)(i)(A)(*1*) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 206.

(H) Previously approved on November 9, 1978, in paragraph (c)(31)(vi)(C) of this section and deleted with replacement in paragraph (c)(103)(xviii)(A) of this section: Rule 219.

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(32) * * *

(iv) * * *

(G) Previously approved on November 9, 1978, in paragraph (c)(32)(iv)(C) of this section and deleted with replacement in paragraph (c)(103)(xviii)(A) of this section: Rule 219.

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(39) * * *

(ii) * * *

(K) Previously approved on November 9, 1978, in paragraph (c)(39)(ii)(B) of this section and now deleted with replacement in paragraph (c)(601)(i)(A)(*1*) of this section: Rule 206.

(L) Previously approved on November 9, 1978, in paragraph (c)(39)(ii)(B) of this section and now deleted with replacement in paragraph (c)(600)(i)(A)(*1*) of this section: Rule 219.

* * * * *

(iv) * * *

(K) Previously approved on November 9, 1978, in paragraph (c)(39)(iv)(B) of this section and deleted without replacement for implementation in the Mojave Desert Air Quality Management District: Rules 206 and 219.

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(68) * * *

(iii) Previously approved on January 21, 1981, in paragraph (c)(68)(i) of this section and deleted with replacement in paragraph (c)(239)(i)(A)(*1*) of this section for implementation in the Mojave Desert Air Quality Management District: Rules 1301, 1303, 1304, 1306, 1307, 1310, 1311, and 1313.

(iv) Previously approved on January 21, 1981, in paragraph (c)(68)(i) of this section and deleted with replacement in paragraph (c)(155)(iv)(B) of this section: Rule 1305.

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(70) * * *

(i) * * *

(E) Previously approved on January 21, 1981, in paragraph (c)(70)(i)(A) of this section and deleted with replacement in paragraph (c)(239)(i)(A)(*1*) of this section for implementation in the Mojave Desert Air Quality Management District: Rules 1302 and 1308.

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(87) * * *

(iv) * * *

(B) Previously approved on June 9, 1982, in paragraph (c)(87)(iv)(A) of this section and deleted with replacement in paragraph (c)(239)(i)(A)(*1*) of this section: Rules 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1310, 1311, and 1313.

* * * * *

(103) * * *

(xviii) * * *

(C) Previously approved on July 6, 1982, in paragraph (c)(103)(xviii)(A) of this section and now deleted with replacement in paragraph (c)(600)(i)(A)(*1*) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 219.

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(155) * * *

(iv) * * *

(C) Previously approved on January 29, 1985 in paragraph (c)(155)(iv)(B) of this section and deleted with replacement in paragraph (c)(239)(i)(A)(*1*) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 1305.

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(224) * * *

(i) * * *

(C) * * *

(*3*) Previously approved on January 22, 1997, in paragraph (c)(224)(i)(C)(*1*) of this section and now deleted with replacement in paragraph (c)(248)(i)(D)(*3*) of this section: Rule 1402, adopted on June 28, 1995.

* * * * *

(239) * * *

(i) * * *

(A) * * *

(*4*) Previously approved on November 13, 1996, in paragraph (c)(239)(i)(A)(*1*) of this section and now deleted with replacement in paragraphs (c)(600)(i)(A)(*2*) through (*8*) of this section: Rules 1300, 1301, 1302, 1303, 1304, 1305, and 1306, adopted on March 25, 1996.

* * * * *

(248) * * *

(i) * * *

(D) * * *

(*3*) Rule 1402, ''Emission Reduction Credit Registry,'' amended on May 19, 1997.

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(598) [Reserved]

(599) [Reserved]

(600) The following regulations were submitted on July 23, 2021, by the Governor's designee as an attachment to a letter dated July 22, 2021.

(i) *Incorporation by reference.* (A) Mojave Desert Air Quality Management District.

(*1*) Rule 219, ''Equipment Not Requiring a Permit,'' amended on January 25, 2021.

(*2*) Rule 1300, ''New Source Review General,'' amended on March 22, 2021.

(*3*) Rule 1301, ''New Source Review Definitions,'' amended on March 22, 2021.

(*4*) Rule 1302, ''New Source Review Procedure,'' (except subsections (C)(5) and (C)(7)(c)), amended on March 22, 2021.

(*5*) Rule 1303, ''New Source Review Requirements,'' amended on March 22, 2021.

(*6*) Rule 1304, ''New Source Review Emissions Calculations,'' amended on March 22, 2021.

(*7*) Rule 1305, ''New Source Review Emission Offsets,'' amended on March 22, 2021.

(*8*) Rule 1306, ''New Source Review for Electric Energy Generating Facilities,'' amended on March 22, 2021.

(B) [Reserved]

(ii) [Reserved]

(601) The following regulations were submitted on October 15, 2021, by the Governor's designee as an attachment to a letter dated October 14, 2021.

(i) *Incorporation by reference.* (A) Mojave Desert Air Quality Management District.

(*1*) Rule 206, ''Posting of Permit to Operate,'' amended on February 22, 2021.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

■ 3. Section 52.281 is amended by revising paragraph (d) introductory text and adding paragraph (d)(9) to read as follows:

§ 52.281 Visibility protection.

* * * * *

(d) *Plan provisions.* The provisions of § 52.28 are hereby incorporated and made part of the applicable plan for the State of California, except for the air pollution control districts listed in this paragraph (d). The provisions of § 52.28 remain the applicable plan for any Indian reservation lands, and any other area of Indian country where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, located within the State of California, including any such areas located in the air pollution control districts listed in this paragraph (d).

* * * * *

(9) Mojave Desert Air Quality Management District.

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[FR Doc. 2023–13393 Filed 6–29–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230626–0155]

RIN 0648–BL58

Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; Conversion of Historical Captain Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements management measures as described in an abbreviated framework action under the Fishery Management Plans (FMPs) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP). This final rule will enable a permit holder to replace a historical captain endorsement in the reef fish and CMP fisheries in the Gulf of Mexico (Gulf) with a standard Federal charter vessel/headboat permit in the same Gulf fisheries. NMFS expects that this final rule will reduce the potential regulatory and economic burden on historical captain permit holders.

DATES: This final rule is effective on July 31, 2023.

ADDRESSES: An electronic copy of the abbreviated framework document that contains an environmental assessment and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/framework-action-historical-captain-permits-conversion-standard-federal-charter-headboat.* The proposed rule for this action can be downloaded from the same NMFS website or from *www.regulations.gov* by searching ''NOAA–NMFS–2022–0121.''

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Gulf Council) manages reef fish in Gulf Federal waters under the Reef Fish FMP. In Gulf and Atlantic Federal waters, the Gulf Council and South Atlantic Fishery Management Council (Councils) jointly manage CMP species under the CMP FMP. The Gulf Council prepared the Reef Fish FMP and the Councils jointly prepared the CMP FMP. NMFS implements the FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On January 27, 2023, NMFS published a proposed rule in the **Federal Register** for the abbreviated framework action and requested public comment (88 FR 5295). The proposed rule and the abbreviated framework action outline the rationale for the action contained in this final rule. A summary of the management measure described in the abbreviated framework action and implemented by this final rule is provided below.

Management Measure Contained in This Final Rule

This final rule enables a permit holder with an eligible historical captain endorsement in the Gulf reef fish or Gulf CMP fishery to convert that endorsement to a standard Federal charter vessel/headboat permit (for-hire permit) in the same Gulf fishery, as applicable. This rule also extends the same rights and responsibilities of these standard for-hire permits to eligible individuals who choose to convert a historical captain endorsement to a standard for-hire permit. An eligible historical captain endorsement is hereafter referenced in this preamble as a historical captain permit. There are currently four historical captain permits, two for Gulf reef fish and two for Gulf CMP species, and are held by two individuals. Historical captain permits cannot be transferred to another person and no additional historical captain permits can be issued (50 CFR 622.20(b)(1)(i)(B); 85 FR 22043, April 21, 2020).

If an individual with an eligible historical captain permit wants to convert the permit to a standard for-hire permit, the individual must submit an application for a standard for-hire permit to NMFS along with their current, original historical captain permit (not a copy), and all supporting documents and fees, including documentation for the vessel to which NMFS will issue or associate with the standard for-hire permit. Unlike a historical captain permit, which is issued to an individual, a standard for-hire permit must be issued to a vessel with a valid U.S. Coast Guard certificate of documentation or state registration certificate (50 CFR 622.4(a)). If the permit applicant is the owner of the vessel, NMFS' Permits Office staff will