



Draft

Staff Report

for

Amendment of

Regulation XIII – New Source Review

Regulation XVII – Prevention of Significant Deterioration

And

Rule 1401 – New Source Review for Toxic Air Contaminants.

For Amendment on

June 15, 2021

**Antelope Valley
Air Quality
Management District**

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STAFF REPORT
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List of Acronyms

APCO	Air Pollution Control Officer
BACT	Best Available Control Technology
BARCT	Best Available Retrofit Control Technology
CARB	California Air Resources Board
CCAA	California Clean Air Act
CEQA	California Environmental Quality Act
FCAA	Federal Clean Air Act
FOP	Federal Operating Permit (aka Regulation XII)
H&S Code	California Health & Safety Code
HAPs	Hazardous Air Pollutants
ICE	Internal Combustion Engine
LAER	Lowest Achievable Emissions Rate
MACT	Maximum Achievable Control Technology Standards (for HAPs)
MDAB	Mojave Desert Air Basin
MDAQMD	Mojave Desert Air Quality Management District
NO _x	Oxides of Nitrogen
NAAQS	National Ambient Air Quality Standards
NESHAP	National Emission Standard for Hazardous Air Pollutants
NSPS	New Source Performance Standard
NSR	New Source Review (aka Regulation XIII)
O ₃	Ozone
PM ₁₀	Particulate Matter less than 10 microns (aka Course Particulate)
PM _{2.5}	Particulate Matter less than 2.5 microns (aka Fine Particulate)
PSD	Prevention of Significant Deterioration (aka Regulation XVI)
PUC	Public Utilities Commission
RACT	Reasonably Available Control Technology
SBCAPCD	San Bernardino County Air Pollution Control District (Predecessor agency to MDAQMD)
SCAQMD	South Coast Air Quality Management District
So.Cal.APCD	Southern California Air Pollution Control District (Predecessor agency to SBCAPCD)
SIP	State Implementation Plan
SO _x	Oxides of Sulfur
USEPA	U.S. Environmental Protection Agency
VOC	Volatile Organic Compounds

STAFF REPORT
Regulation XIII – *New Source Review*
Regulation XVII – *Prevention of Significant Deterioration and*
Rule 1401 – *New Source Review for Toxic Air Contaminants*

I. PURPOSE OF STAFF REPORT

A staff report serves several discrete purposes. Its primary purpose is to provide a summary and background material to the members of the Governing Board. This allows the members of the Governing Board to be fully informed before making any required decision. It also provides the documentation necessary for the Governing Board to make any findings, which are required by law to be made prior to the approval or adoption of a document. In addition, a staff report ensures that the correct procedures and proper documentation for approval or adoption of a document have been performed. Finally, the staff report provides evidence for defense against legal challenges regarding the propriety of the approval or adoption of the document.

II. EXECUTIVE SUMMARY

In 2015, pursuant to requirements under the Federal Clean Air Act (FCAA),¹ the United States Environmental Protection Agency (USEPA) lowered the primary ozone National Ambient Air Quality Standard (NAAQS) from 75 parts per billion (ppb) to 70 ppb.² In 2018 USEPA promulgated a final implementation rule³ specifying timeline requirements for submissions of mandatory elements into the State Implementation Plan (SIP) under the revised Ozone NAAQS. The Antelope Valley Air Quality Management District (AVAQMD or District) has been designated as non-attainment for ozone and classified Severe-15 and thus the District is required to submit specific elements in accordance with the implementation rule. One of the required elements is a certification that the District's Nonattainment New Source Review program (NANSR or NSR⁴) meets or exceeds various requirements as set forth in the FCAA and the regulations promulgated thereunder. The deadline under the implementation rule is 3 years from the designation of nonattainment under the NAAQS.⁵ As the effective non-attainment designation date for that area of the AVAQMD was 8/3/2018 the NSR certification submission is due to USEPA on or before 8/3/2021.

In response to the December 2018 implementation rule the AVAQMD developed the *70 ppb Ozone Standard Implementation Evaluation: RACT SIP Analysis; Federal Negative Declarations; and, Emission Statement Certification (70 ppb O₃ Evaluation)* which was originally designed to submit many of the required SIP elements including the NSR certification. In a letter to the Mojave Desert Air Quality Management District (MDAQMD) USEPA indicated that their NSR certification could not be made due to then unspecified major deficiencies

¹ 42 U.S.C. §§7401 et seq.

² 80 FR 65292, 10/1/2015, Effective 10/26/2015.

³ 83 FR 62998, 12/6/2018.

⁴ Technically the Prevention of Significant Deterioration (PSD) program is also considered part of Federal NSR as it covers preconstruction review of attainment air pollutants. In general use however, the term NSR refers to Nonattainment NSR provisions only.

⁵ 83 FR 62998, 63000, 12/6/2018.

identified in the MDAQMD's current NSR Rules contained in the SIP along with the more recent, but as yet unacted upon, NSR rule submissions.⁶ USEPA has indicated that since the AVAQMD NSR rules are highly similar to those in the MDAQMD the same alleged deficiencies would also preclude an NSR certification for AVAQMD. As a result, the AVAQMD adopted 70 ppb O₃ Evaluation on 7/21/2020 without the NSR certification.⁷

On 12/19/2019 USEPA provided commentary to the MDAQMD via letter⁸ regarding the alleged deficiencies in that District's pending NSR Rule submissions⁹ as well as the NSR program as contained in the SIP.¹⁰ Once again USEPA indicated orally that the AVAQMD NSR rules suffered from the same deficiencies. The MDAQMD subsequently embarked upon a substantive overhaul of the NSR program to address USEPA's concerns¹¹ and adopted a revised NSR Rule on 3/22/2021.¹² The ongoing efforts with the MDAQMD rules, involving the MDAQMD, USEPA and California Air Resources Board (CARB) staff, has resulted in a series of amendments which are easily translatable into similar revisions to the AVAQMD NSR Rules. Such amendments, with one notable exception¹³, should be acceptable to USEPA as they are highly similar to changes USEPA indicated were acceptable in the MDAQMD NSR Rules.

The AVAQMD is therefore proposing to: amend Regulation XIII – *New Source Review* and Regulation XVII – *Prevention of Significant Deterioration*; and make conforming changes to Rule 1401 – *New Source Review for Toxic Air Contaminants*. The large majority of the proposed amendments are simply clarifications along with explanatory language codifying current District permitting practices. Applicability thresholds, in the main, remain the same as those currently in the District's Rulebook. Substantive proposed amendments include the following: addition of a variety of definitions; addition of a Stack Height Analysis as required by 40 CFR 51.164, addition of a 30 day notification period prior to issuance for certain "Minor NSR" permitting actions, the bifurcation of threshold BACT and Major Facility applicability calculations from calculations involving the amount of offsets which may be necessary in certain permitting actions, adjustment of the BACT and Major Facility threshold calculations, the removal of Rule 1310 as such rule was practically ineffective and completely unused; and a shift of Regulation XVII – *Prevention of Significant Deterioration* to an adoption by reference format.¹⁴ The proposed amendments will also enable the AVAQMD to request delegation of not only PSD permitting authority but also enhanced Title V permitting authority which, when granted, will allow the AVAQMD to process and issue PSD permits Title V permits and permit

⁶ USEPA Letter, G. Rios to B. Poiriez, *2019 Certification of SIP Approved Nonattainment New Source Review*, 10/10/2019 (Hereafter, *USEPA Letter of 10/10/2019*)

⁷ AVAQMD Governing Board Agenda Item #8, 7/21/2020; Resolution 20-08, 7/21/2020; AVAQMD, 70 ppb O₃ Evaluation Final Staff Report, 7/21/2020.

⁸ USEPA Letter L. Beckham to B. Poiriez – *MDAQMD New Source Review Program*, 12/19/2019 (Hereafter, *USEPA Letter of 12/19/2019*)

⁹ MDAQMD Regulation XIII – *New Source Review* as amended on 9/24/2001, 8/28/2006, and 8/22/2016.

¹⁰ MDAQMD Regulation XIII, 3/25/1996 and approved at 61 FR 58133, 11/13/1996.

¹¹ See Appendix C, Response to Comments #1, pgs C23-C28

¹² MDAQMD Governing Board Agenda Item #12, 3/22/2021; MDAQMD Resolution 21-03, 3/22/2021; and MDAQMD Final Staff Report, 3/22/2021.

¹³ USEPA Letter of 12/19/2019, Comment 1.2.2.c.

¹⁴ The PSD program is to a certain degree entwined with Regulation XIII and conforming changes would be necessary in any case.

changes; and Air Toxics determinations at the same time and in the same action as the applicable NSR evaluation if the applicant so wishes.

III. STAFF RECOMMENDATION

Staff recommends that the Governing Board of the AVAQMD amend Regulation XIII – *New Source Review*, amend Regulation XVII – *Prevention of Significant Deterioration*, make conforming changes to Rule 1401 – *New Source Review for Toxic Air Contaminants*, and approve the appropriate California Environmental Quality Act (CEQA) documentation. This action is necessary to allow the certification of certain mandatory submission requirements in response to the 2015 70 ppb Ozone standard; to address a variety of issues identified by the USEPA in their review of previously submitted versions; to clarify the interrelationship between these rules and Rule 219 – *Equipment Not Requiring a Permit* as proposed for amendment elsewhere in the agenda; to remove unused and unnecessary rules and provisions; and to provide reorganization for additional clarity.

IV. LEGAL REQUIREMENTS CHECKLIST

The findings and analysis as indicated below are required for the procedurally correct adoption of amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration* and Rule 1401 – *New Source Review for Toxic Air Contaminants*. Each item is discussed, if applicable, in Section V. Copies of related documents are included in the appropriate appendices.

FINDINGS REQUIRED FOR RULES & REGULATIONS:

- Necessity
- Authority
- Clarity
- Consistency
- Nonduplication
- Reference
- Public Notice & Comment
- Public Hearing

REQUIREMENTS FOR STATE IMPLEMENTATION PLAN SUBMISSION (SIP):

- Public Notice & Comment
- Availability of Document
- Notice to Specified Entities (State, Air Districts, USEPA, Other States)
- Public Hearing
- Legal Authority to adopt and implement the document.
- Applicable State laws and regulations were followed.

ELEMENTS OF A FEDERAL SUBMISSION:

- Elements as set forth in applicable Federal law or regulations.

CALIFORNIA ENVIRONMENTAL QUALITY ACT REQUIREMENTS (CEQA):

- Ministerial Action
- Exemption
- Negative Declaration
- Environmental Impact Report
- Appropriate findings, if necessary.
- Public Notice & Comment

SUPPLEMENTAL ENVIRONMENTAL ANALYSIS (RULES & REGULATIONS ONLY):

- Environmental impacts of compliance.
- Mitigation of impacts.
- Alternative methods of compliance.

OTHER:

- Written analysis of existing air pollution control requirements
- Economic Analysis
- Public Review

V. DISCUSSION OF LEGAL REQUIREMENTS

A. REQUIRED ELEMENTS/FINDINGS

This section discusses the State of California statutory requirements that apply to the proposed adoption of Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants*. These are actions that need to be performed and/or information that must be provided in order to amend the rule in a procedurally correct manner.

1. State Findings Required for Adoption of Rules & Regulations:

Before adopting, amending, or repealing a rule or regulation, the District Governing Board is required to make findings of necessity, authority, clarity, consistency, non-duplication, and reference based upon relevant information presented at the hearing. The information below is provided to assist the Board in making these findings.

a. Necessity:

The proposed adoption of amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* are necessary to: allow certification of the AVAQMD’s NSR program in response to the 2015 70 ppb Ozone Standard, address a variety of approvability issues as identified by USEPA, allow the AVAQMD to request PSD permitting authority, and to allow the AVAQMD to request enhanced NSR authorization to allow Title V permits and permit changes to be addressed in the same NSR action if the applicant so wishes.

b. Authority:

The District has the authority pursuant to California Health and Safety Code (H&S Code) §40702 to adopt, amend or repeal rules and regulations.

c. Clarity:

The proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* are clear in that they are written so that the persons subject to the Rule can easily understand the meaning. Most of the proposed amendments are simply designed to clarify particular existing practices. Some provisions have been reorganized and renumbered to conform to other, similar, rule provisions as well as to remove unused and unusable provisions. A few additions have

been made to conform with FCAA requirements. Furthermore, the Minor Facility notice requirements and bifurcation of the applicability calculations from the calculations required to determine the amount of offsets have been designed to lessen confusion regarding use of these provisions.

d. Consistency:

The proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* are in harmony with, and not in conflict with or contradictory to any State law or regulation, Federal law or regulation, or court decisions.

H&S Code §§42300 et seq. allows the District to establish a permitting program requiring the obtaining of a permit prior to building, erecting, altering, replacement, operating or using any machine, equipment, or other contrivance that causes or controls air contaminants¹⁵ and to ensure that such equipment does not prevent or interfere with the attainment or maintenance of any applicable air quality standard¹⁶ among other requirements. Similarly, the FCAA requires areas which have been designated nonattainment with the NAAQS to develop a permitting program to ensure that the preconstruction review requirements for new or modified stationary source of air contaminants are met.¹⁷ The District has been designated Federal nonattainment for O₃.¹⁸ Regulation XIII and Regulation XVII are the AVAQMD’s rules which establish the State and Federal permitting program and implement the mandatory requirements thereof.

In addition, California Law¹⁹ requires an analysis when amendments are proposed to a nonattainment NSR program to show that the proposed changes are not less stringent than the FCAA provisions and implementing regulations which were in existence as of December 30, 2002.²⁰

¹⁵ H&S Code §42300(a).

¹⁶ H&S Code §42301(a).

¹⁷ Federal Clean Air Act §§110(a)(2), 165(a) and 172(b)(5); 42 U.S.C. §§7410(a)(2), 7475(a) and 7502(b)(5)

¹⁸ 40 CFR 81.305 (See specifically the tables for O₃ 1-hour Standard, O₃ 1997 8 hour Standard, 8 hour O₃ NAAQS and 2015 8 hour O₃ NAAQS). Please also note that there is a so called “clean data” finding for the 1 hour O₃ standard in 80 FR 20166, 4/15/2015 for the Southeast Desert Ozone Nonattainment Area (which includes the jurisdiction of the AVAQMD) but redesignation has not yet occurred.

¹⁹ H&S Code §§42500 et seq.

²⁰ H&S Code §42504.

Finally, Title V of the FCAA²¹ each state (in this case the District) to submit a Federal Operating Permit (FOP) program to control major stationary sources of air pollution.²² Under the applicable regulations²³ the AVAQMD can request delegation of “Enhanced NSR” status to allow the issuance of and modifications to Title V permits to be performed in conjunction with and using the same notice provisions as the NSR permitting actions. The proposed amendments have been designed to allow the AVAQMD to request this delegation.

Section VI of this staff report contains a detailed discussion of the consistency of each proposed amendment with the applicable State or Federal requirements.

e. Nonduplication:

The proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* do not impose the same requirements as any existing State or Federal law or regulation because the provisions listed in subsection V.A.1.d. above all require the adoption of rules and regulations to implement such requirements and programs.

f. Reference:

The District has the authority pursuant to H&S Code §40702 to adopt, amend or repeal rules and regulations.

g. Public Notice & Comment, Public Hearing:

Notice for the public hearing for the proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* will be published on (no later than 5/13/2021 for 6/15/2021 adoption). See Appendix “B” for a copy of the public notice. See Appendix “C” for copies of comments, and District responses.

2. Federal Elements (SIP Submittals, Other Federal Submittals).

Submittals to USEPA are required to include various elements depending upon the type of document submitted and the underlying Federal law that requires the submittal. The information below indicates which general procedural elements

²¹ Federal Clean Air Act §§501 et seq., 42 U.S.C. §§7661 et seq.

²² Federal Clean Air Act 502(d)(1), 42 U.S.C. §7661a(d)(1).

²³ 40 CFR 70.7(d)(1)(v).

are required for the proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* and how they were satisfied.

a. Satisfaction of Underlying Federal Requirements:

The FCAA requires that Districts adopt and implement programs to ensure that certain large new or modified stationary sources of air pollutants obtain permits prior to construction or modification²⁴ The program covering nonattainment pollutants is commonly referred to as NSR or NANSR while the program for attainment pollutants referred to as PSD. Such programs must be included in the applicable SIP and comply with the implementing regulations as promulgated and adopted by USEPA.²⁵ Since Regulation XIII and Regulation XVII are the regulations implementing these requirements they must comply with the applicable provisions of the FCAA and the regulations promulgated thereunder. Please see the appropriate provision section VI. for a detailed discussion regarding compliance of certain proposed provisions with the specific applicable Federal requirements.

In addition, the FCAA requires all submissions for inclusion into the SIP to meet certain requirements. The criteria for determining completeness of SIP submissions are set forth in 40 CFR Part 51, Appendix V, 2.0. In addition, FCAA §110(l) (42 U.S.C. 7410(l)) requires that any SIP submission which might possibly be construed as a relaxation of a requirement provide a demonstration that the change not interfere with any FCAA requirements concerning attainment or Reasonable Further Progress (RFP). Since the AVAQMD’s NSR program is a specific response to implement FCAA programmatic requirements it is required to be in the SIP and is thus subject to these general completeness requirements.

FCAA 110(l), (42 U.S.C. 7410(l)) further requires that any SIP submission which might potentially be construed as a relaxation of a previously existing requirement provide a demonstration that the proposed change not interfere with the attainment or maintenance of the NAAQS and or any Reasonable Further Progress requirements. A similar analysis is required under California Law to show that any proposed changes are not less stringent than the

²⁴ Federal Clean Air Act §§110(a)(2), 112(i)(1), 165(a), 172(b)(5), and 502(a)(2)(C); 42 U.S.C. §§7410(a)(2), 7412(i)(1), 7475(a), 7502(b)(5) and 7661a(a)(2)(C).

²⁵ 40 CFR 51.160 et seq. and 40 CFR 52.21

provisions implementing the FCAA in effect as of December 30, 2002.²⁶ Please see subsection VI. H. for the applicable analysis.

Finally, 40 CFR 51.100 requires areas not in attainment for the NAAQS to submit specific plan elements for the particular pollutant(s) for which they have been designated nonattainment. The AVAQMD was designated nonattainment under the 2015 NAAQS revision²⁷ and thus is required to submit either revised programmatic elements or a certification that the currently existing elements meet or exceeds the specific requirements.²⁸ As the AVAQMD has been informed that the current NSR Rules cannot, in USEPA's opinion, be certified the AVAQMD is required to upgrade its NSR rules to correct identified alleged deficiencies.²⁹ Please see section VI. for a detailed discussion as to how the particular elements are satisfied by the proposed amendments.

b. Public Notice and Comment:

Notice for the public hearing for the Notice for the public hearing for the proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* will be published (no later than 5/13/2021 for 6/15/2021 adoption). See Appendix “B” for a copy of the public notice. See Appendix “C” for copies of comments and District responses.

c. Availability of Document:

Copies of the Notice for the public hearing for the proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* and the accompanying draft staff report were made available to the public on mm/dd/yyyy. The proposed amendments were also reviewed by the Technical Advisory Committee, a committee consisting of a variety of regulated industry and local governmental entities, on mm/dd/yyyy.

²⁶ H&S Code §§42500 et seq.

²⁷ 40 CFR 81.305

²⁸ 83 FR 62998, 12/6/2018.

²⁹ USEPA oral comments indicating deficiencies identified in *USEPA Letter of 12/19/2019* to MDAQMD also exist in the AVAQMD NSR Rules.

d. Notice to Specified Entities:

Copies of the proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* and the accompanying draft staff report were sent to all affected agencies. The proposed amendments were sent to CARB and USEPA on mm/dd/yyyy.

e. Public Hearing:

A public hearing to consider the proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* has been set for 6/15/2021.

f. Legal Authority to Adopt and Implement:

The District has the authority pursuant to H&S Code §40702 to adopt, amend, or repeal rules and regulations and to do such acts as may be necessary or proper to execute the duties imposed upon the District.

g. Applicable State Laws and Regulations Were Followed:

Public notice and hearing procedures pursuant to H&S Code §§40725-40728 have been followed. See Section (V)(A)(1) above for compliance with state findings required pursuant to H&S Code §40727. See Section (V)(B) below for compliance with the required analysis of existing requirements pursuant to H&S Code §40727.2. See Section (V)(C) for compliance with economic analysis requirements pursuant to H&S Code §40920.6. See Section (V)(D) below for compliance with provisions of the CEQA.

B. WRITTEN ANALYSIS OF EXISTING REQUIREMENTS

H&S Code §40727.2 requires air districts to prepare a written analysis of all existing federal air pollution control requirements that apply to the same equipment or source type as the rule proposed for modification by the District. Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* are primarily logistical in nature and meant to ensure that all necessary analysis and notices for proper permit issuance are performed. While they do require the imposition of Best Available Control Technology (BACT) on certain new or modified equipment it does not specify what particular equipment or emissions level would satisfy the requirement as BACT must be determined on an equipment by equipment basis as part of the permitting process. Similarly, while the

Regulations do require the provision of offsetting emissions reductions in certain cases the specific reductions must be approved as part of the permitting process itself. Specifically, such BACT and Offset determinations are governed by other District Rules, Regulations as well as State and Federal Law, regulations and guidance documents. Therefore, as a procedural rule providing implementation of State and Federal requirements rather than providing specific prohibitory provisions, this analysis is not necessary.

C. ECONOMIC ANALYSIS

1. General

Despite the multitude proposed changes in rule language, the District expects that there will be little to no economic impact from the propose amendments. This is due to the fact that the proposed amendments primarily affect the functions and analysis performed by the District as opposed to requirements imposed upon Facilities. In fact, the potential for the AVAQMD to obtain “Enhanced NSR” status could result in a cost savings as Title V permit modification would not need to be noticed separately from the underlying NSR action.

2. Incremental Cost Effectiveness

Pursuant to H&S Code §40920.6, incremental cost effectiveness calculations are required for rules and regulations which are adopted or amended to meet the California Clean Air Act (CCAA) requirements for Best Available Retrofit Control Technology (BARCT) or “all feasible measures” to control volatile compounds (VOCs), oxides of nitrogen (NO_x) or oxides of sulfur (SO_x). As a procedural rule, which does not require specific control measures this analysis is not required.

This analysis is primarily intended for source specific prohibitory rules rather than procedural rules. However, the proposed amendments and new rule do require BACT to be placed upon certain new or modified emissions units. While this might technically be considered the imposition of BARCT or “all feasible measures” the specific controls required for a particular piece of equipment will need to be analyzed on a case by case basis as applications are submitted. The particular equipment involved in each application will be subject to the provisions of the applicable State, Federal and/or District rules governing the particular source category involved. Due to the necessity of an application to specify BACT this analysis, if such is even applicable, is too speculative to be performed at this time. Please note the imposition of specific BARCT or “all feasible measures” by any new or modified prohibitory rule will require an incremental cost analysis upon adoption/amendment.

D. ENVIRONMENTAL ANALYSIS (CEQA)

Through the process described below the appropriate CEQA process for the proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of*

Significant Deterioration, and Rule 1401 – *New Source Review for Toxic Air Contaminants* was determined.

1. The proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* meets the CEQA definition of “project”. It is not a “ministerial” action.

2. The proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* are exempt from CEQA Review because the proposed actions do not result in a practical change of any thresholds or in the permitting status of any class or category of equipment. In addition, the proposed amendments increase the environmental protection in that they result in notice to a wider number of agencies and the general public for a greater amount of time prior to permit issuance. Therefore, there is no potential that the proposed amendments might cause the release of additional air contaminants or create any other adverse environmental impacts, a Class 8 Categorical Exemption (14 Cal Code Regs. §15308) applies. Copies of the documents relating to CEQA can be found in Appendix “D”.

E. SUPPLEMENTAL ENVIRONMENTAL ANALYSIS

1. Potential Environmental Impacts

The potential environmental impacts of compliance with the proposed amendments to Regulation XIII – *New Source Review*, Regulation XVII – *Prevention of Significant Deterioration*, and Rule 1401 – *New Source Review for Toxic Air Contaminants* will not cause any impacts because the underlying requirements currently in effect remain primarily unchanged.

In addition, the proposed amendments are procedural in nature and designed to enhance the review process under NSR and PSD programs. While these programs do not in and of themselves require specific control technologies or compliance methodologies on particular Facilities or source categories they do ensure that compliance with other source category specific rules and regulations are included in the ultimate permit. The only substantive requirements on Facilities contained in the rule is that of BACT on new or modified equipment. BACT is highly dependent on the nature and type of equipment involved and therefore the analysis of specific impacts from the imposition of BACT on a particular project is too speculative to be performed on a generalized basis. It must be noted, however, that any new or modified Facility will in and of itself be required to undergo CEQA review when proposed and thus specific potential environmental impacts caused by the imposition of requirements such as BACT will end up being analyzed at that time.

2. Mitigation of Impacts

N/A

3. Alternative Methods of Compliance

N/A

F. PUBLIC REVIEW

See Staff Report Section (V)(A)(1)(g) and (2)(b), as well as Appendix “B”

VI. TECHNICAL DISCUSSION

A. RULE APPLICABILITY

The proposed amendments to Regulation XIII – *New Source Review* and Regulation XVII – *Prevention of Significant Deterioration* will affect all applications for a new or modified permit within the AVAQMD. This is because all applications, regardless of size, are subject to the provisions of Regulation XIII³⁰ to ensure that all appropriate and applicable analysis are performed prior to permit issuance. Exactly which analyses are applicable to a particular Facility or Emissions Unit are based upon the proposed unit itself, the underlying Facility and the resultant emissions change, if any. In some cases, the proposed permit(s) or modification to permit(s) will not require much analysis at all and the permit will be issued pursuant to the provisions of Regulation II - *Permits*. In other cases, the proposed permit(s) or modification to permit(s) will require substantial analysis and a variety of procedural activities prior to permit issuance. The procedural steps which determine the nature and amount of analysis for a particular proposed permit or modification to a permit are currently located in Rule 1302 – *New Source Review Procedure*. Specific requirements, calculation methods and thresholds are located elsewhere in Regulation XIII.

1. Applicability Thresholds

The basic applicability threshold for criteria air pollutants³¹ in Regulation XIII are not changed by the proposed amendments. Proposed Rule 1300 – *New Source Review General*, continues to state that the provisions of Regulation XIII apply to any new or modified Facility or Emissions Unit. Proposed Rule 1303 – *New Source Review Requirements* continues to require BACT and offsetting emissions reductions when such a new or modified Facility or Emissions Unit has emissions of a nonattainment air pollutant over a threshold level.³²

³⁰ Current Rule 1300(B) .

³¹ Those air pollutants for which an Ambient Air Quality Standard (either State or Federal) has been promulgated by the appropriate authority.

³² Proposed Rule 1300(B) and Rule 1303(A) and (B).

Currently the AVAQMD has been designated nonattainment with the NAAQS for Ozone (O₃)³³ and classified Severe. For purposes of the California Ambient Air Quality Standards (CAAQS) the AVAQMD is nonattainment for O₃ and PM₁₀ Districtwide³⁴. Therefore, the nonattainment pollutants subject to threshold analysis under Regulation XIII are O₃; its precursors NO_x and VOC; and PM₁₀. Toxic Air Contaminants (TAC) and Hazardous Air Pollutants (HAP) are covered by the provisions of current Rule 1401 – *New Source Review for Toxic Air Contaminants* and Regulated Air Pollutants for which the District is in attainment are covered by the provisions of Regulation XVII – *Prevention of Significant Deterioration*. Each of these programs have their own thresholds and requirements. The existing criteria pollutant thresholds and associated requirements are not changed by these proposed amendments and are summarized in Table 1 below.

Table 1
Applicability Thresholds and Requirements
(Rule 1303(A) & (B))

Source Category	Threshold	Requirements
New Minor Facility	Facility Proposed Emissions are: <25 tpy of NO _x /VOC <15 tpy of PM ₁₀	●BACT on all new/modified equipment with Proposed Emissions > 25 lbs/day.
Minor Facility with Minor Modification	Facility Proposed Emissions as Modified are: <25 tpy of NO _x /VOC <15 tpy of PM ₁₀	●BACT on all new/modified equipment with Proposed Emissions > 25 lbs/day.
Minor Facility with a Significant Modification ³⁵	Facility Proposed Emissions as Modified are: <25 tpy of NO _x /VOC <15 tpy of PM ₁₀ AND has a Significant emissions increase.	●See: Minor Facility with Modification that makes it a Major Facility below.

³³ 40 CFR 81.305 (See specifically the tables for O₃ 1-hour Standard, O₃ 1997 8 hour Standard, 8 hour O₃ NAAQS and 2015 8 hour O₃ NAAQS). Please also note that there is a so called “clean data” finding for the 1 hour O₃ standard in 80 FR 20166, 4/15/2015 for the Southeast Desert Ozone Nonattainment Area (which includes the jurisdiction of the AVAQMD) but redesignation has not yet occurred.

³⁴ 17 CCR §§60201, and 60208 respectively.

³⁵ While “Significant” modifications under the FCAA only occur at Major Facilities, the current AVAQMD language provides that any “Significant” change as defined in proposed Rule 1301(UUU) will be greater than the “Major Facility” threshold as set forth in the proposed Rule 1303(B)(1) table and therefore such a Facility would therefore automatically become a Major Facility.

Source Category	Threshold	Requirements
Minor Facility with Modification that makes it Major	Facility Proposed Emissions as Modified are: >25 tpy of NO _x /VOC >15 tpy of PM ₁₀	<ul style="list-style-type: none"> ●BACT on all new/modified equipment.³⁶ ●Offset each Nonattainment Air Pollutant's Proposed Emissions as Modified which is over the threshold back to 0 applying applicable offset ratio.
New Major Facility	Facility Proposed Emissions are: >25 tpy of NO _x /VOC >15 tpy of PM ₁₀	<ul style="list-style-type: none"> ●BACT on all new/modified equipment. ●Offset all amounts of each Nonattainment Air Pollutant for which Facility is Major using the applicable offset ratio.
Major Facility with any sized Modification	Facility Proposed Emissions are: >25 tpy of NO _x /VOC >15 tpy of PM ₁₀	<ul style="list-style-type: none"> ●BACT on all new/modified equipment. ●Offset all increases of each Nonattainment Air Pollutant for which Facility is Major using the applicable offset ratio.

TAC and HAP applicability requiring an analysis and the imposition of potential requirements are determined differently under Rule 1401 but they are also unchanged by the proposed amendments and remain the same as the current requirements. Specifically, State Toxics NSR (State T-NSR) requirements apply to any new or modified Emissions Unit emitting or having the potential to emit a TAC or which is subject to an Airborne Toxic control Measure (ATCM). For Federal Toxic NSR (Federal T-NSR) the applicability thresholds are as follows:

- Proposed Emissions (New or Modified Emissions Unit) > 10 tpy or more of single HAP
- Proposed Emissions (New or Modified Emissions Unit) > 25 tpy or more of a combination of HAPs
- Proposed Emissions (New or Modified) in a lesser amount as established by USEPA pursuant to a promulgated rule.³⁷
- The Emissions Unit was designated an Air Toxic Area Source by USEPA pursuant to promulgated rule.

Rule 1401 provides requirements that an applicant provide certain specified information regarding TACs and HAPs as well as requiring various analysis, if such is needed, as procedural steps to obtain a permit. This step is included in Regulation XIII primarily to ensure that this analysis is not inadvertently skipped in the permitting process. The provisions of Rule 1401 are not required to be in the SIP and language has been added to Regulation XIII in appropriate places to indicate this.

³⁶ The BACT requirement for Major Facilities as found in proposed Rule 1303(A)(3) will be changed to be set at the Major Facility threshold in the table of proposed Rule 1303(B)(1). As this threshold is larger than the 25 lbs/day BACT requirement found in proposed Rule 1303(A)(1) and (2), most equipment would already have been subject to BACT.

³⁷ This provision is proposed to be added to Rule 1302 but it already applied via the provisions of the Federal Operating Permit Program pursuant to District Regulation XXX – *Title V Permits*.

Rule 1401 also requires submission of items necessary to determine PSD program applicability, items necessary to perform the relevant analysis under that program and requires placement of necessary conditions on any resultant permit.³⁸ These requirements are, once again, primarily included in Regulation XIII to ensure that the analysis is not inadvertently skipped in the permitting process as well as to ensure that the notice and comment requirements for the PSD program are properly performed. Thresholds for applicability are currently provided in Regulation XVII remain unchanged by these proposed amendments (despite the shift in formulation to proposed Rule 1700 which adopts by reference most of the provisions of 40 CFR 52.21). For general reference these thresholds are as follows:³⁹

- A Major PSD Facility⁴⁰ belonging to one of the categories listed in FCAA §169 (42 U.S.C. §7479)⁴¹ emitting or having the potential to emit 100 tpy or more⁴² of a PSD Air Pollutant⁴³.
- A Major PSD Facility not belonging to one of the listed categories emitting or having the potential to emit 250 tpy or more⁴⁴ of a PSD Air Pollutant.
- A new Facility which is a Major PSD Facility for at least one PSD Air Pollutant and has a “significant⁴⁵” emissions increase for any other PSD Air Pollutant.
- A modified Facility which is an existing Major PSD Facility when both the potential increase in emissions **and** the resulting net emissions increase for PSD Pollutants are “significant.”⁴⁶

2. Applicability Integration with Regulation II – *Permits*

District Regulation XIII is in part based on as well as integrally tied to Regulation II. The base requirements for permits are found in District Rules 201 and 203 and apply to all non-vehicular equipment emitting, potentially emitting, or used to control air contaminants.⁴⁷ Regulation II also includes a variety of basic permit requirements regarding applications, issuance, cancellations, denials, and appeals⁴⁸. Once a permit is issued it is required to be posted or maintained on site and operation under the permit is

³⁸ Regulation XVII – *Prevention of Significant Deterioration*.

³⁹ The thresholds listed here are primarily for general reference only. Specific applicability will need to be determined upon a case by case basis.

⁴⁰ To avoid terminology confusion with existing District Rules, proposed Rule 1700(B)(6) defines Major PSD Facility as equivalent to the “Major Stationary Source” definition as found in 40 CFR 52.21(b)(1).

⁴¹ 40 CFR 51.166(b)(1)(iii) and 40 CFR 52.21(b)(1)(iii) which includes the “catch all” provisions for stationary sources regulated under FCAA §§111 and 112 (42 U.S.C. §§7411 and 7412).

⁴² 40 CFR 52.21(b)(1)(i)(a).

⁴³ To avoid terminology confusion with existing District Rules, proposed Rule 1700(B)(9) defines PSD Air Pollutant as equivalent to the “Regulated Air Pollutant” definition found in 40 CFR 52.21(b)(50). In general, this means any attainment air pollutant and its precursor.

⁴⁴ 40 CFR 52.21(b)(1)(i)(b).

⁴⁵ The list of “significant” amounts by pollutant may be found in 40 CFR 52.21(b)(23).

⁴⁶ 40 CFR 52.21(B)(2). Once again to avoid confusion with other District Rules, proposed Rule 1700(B)(6) defines this term as “Major PSD Modification.”

⁴⁷ The “non-vehicular” limitation is found in H&S Code §§39002 and 40000 and echoed in both current and proposed Rule 219(E)(1)

⁴⁸ Rules 201, 202, 203, 205, 206, 207, 208, 209, 210, 212, 214, 215, 216, and 220.

deemed to be acceptance of the permit conditions.⁴⁹ There are two rules specific to requirements of the Federal Operating Permit (Title V) program⁵⁰ and two rules with provisions regarding sampling and stack monitoring.⁵¹ Regulation II also contains a list of equipment which might otherwise require a permit but has been determined by the District to have emissions too small to impact attainment or maintenance of the Ambient Air Quality Standards and which are, for a variety of reasons, difficult or impossible to adequately permit.⁵²

USEPA has expressed concern that equipment deemed exempt from permitting requirements under District Rule 219 – *Equipment Not Requiring a Permit* would somehow “escape” either regulation under other District Rules or that the emissions from such equipment would not be adequately “counted” in Regulation XIII calculations⁵³. While this as a practical matter has not and has never been the case on an operational basis within the AVAQMD permitting program a closer integration between Regulation II, specifically Rule 219, and the Regulation XIII requirements is wise for complete clarity. For this reason, the proposed amendments to Regulation XIII will be submitted in conjunction with the proposed amendments to Rule 219.⁵⁴

Rule 219 lists equipment that has emissions too small to be permitted or otherwise included in a variety of programs. It not only includes a list but also threshold levels for such exclusion such that a particular piece of equipment would need to have emissions less than a threshold AND be on the list of equipment specified in subsection (E) of the rule to qualify.⁵⁵ While such equipment may not need a permit per-se it’s emissions, however, are specifically required to be included in emissions calculations for Regulation XIII purposes.⁵⁶ This directly ties into the applicability provisions of Regulation XIII as found in Rule 1300. The current provisions of Rule 1300(B)(1) were not as clear as the Rule 219(B)(5) provisions and could potentially have been interpreted to exclude Rule 219 permit exempt equipment. The proposed amendments to Regulation XIII rectify this issue and clarify that all Emissions Units subject to Rules 201 or 203 are also subject to the provisions of Regulation XIII. For specific discussions regarding proposed amendments to Rule 219 please see the applicable staff report.⁵⁷

⁴⁹ Rules 206 and 204.

⁵⁰ Rules 225, and 226.

⁵¹ Rule 217, 218, and Rule 218.1.

⁵² Rule 219

⁵³ USEPA Letter of 12/19/2019, Comments 1.1.1.a. and 1.3.2.

⁵⁴ Rule 219 is also proposed for amendment at the same time in a separate action on the AVAQMD’s Governing Board Agenda.

⁵⁵ The burden of proof to show that particular equipment is less than the designated thresholds is, pursuant to proposed Rule 219(B)(9), placed on the Facility and that any Facility claiming such exemption is required to keep records sufficient to enable the District to determine such compliance under proposed Rule 219(F).

⁵⁶ In both current and proposed Rule 219(B)(5).

⁵⁷ AVAQMD, *Draft Staff Report Amendment of Rule 219 – Equipment Not Requiring a Permit for amendment on 6/15/2021 (219 Draft Staff Report)*.

3. Permit Unit vs. Emissions Unit and Regulation XIII Applicability

Regulation XIII applicability, as well as many of the other requirements, has always been expressed in terms of Emissions Unit. The definition of “Emission Unit” in Current Rule 1301(BB) does not specifically mention air pollution control equipment which is regulated under the provisions of District Rules 201 and 203. This causes a bit of confusion with the definition of “Permit Unit” in Current Rule 1301(CCC) which specifically references Rule 203 and thus includes air pollution control equipment. The original intent for these two definitions was that “Permit Unit” should have been a wholly contained subset of “Emissions Unit.” While in practical terms the current definitional structure does not result in problems it does result in a legal anomaly in that “Permit Unit” as a category simultaneously includes both more (includes air pollution control equipment) and less (excludes Rule 219 exempt equipment) than the category “Emissions Unit.” A “Permit Unit” on the other hand is anything that is not specifically exempt pursuant to Rule 219⁵⁸.

The proposed amendments have adjusted the definition of “Emissions Unit” to specifically reference the inclusion of air pollution control equipment as well as to reference Rules 201 and 203. Therefore, “Emissions Unit” as proposed would include all equipment subject to the MDAQMD’s jurisdiction that either emits, has the potential to emit, or controls emissions. In addition, the entire Regulation XIII was examined and each use of the terms “Emissions Unit” and “Permit Unit” were examined to determine if the proper term was used in each instance. Specific explanations for use of a particular term, either “Emissions Unit” or “Permit Unit”, when such was unclear in the current Regulation may be found in Section VI. I. below.

4. Applicability Requirements for Federal Major Facilities and Federal Major Modifications – Rescission of Rule 1310

Current Rule 1310– *Federal Major Facilities and Federal Major Modifications* was adopted as part of the 8/15/2006 amendments to Regulation XIII. During the 2006 Regulation XIII amendment process the MDAQMD was “strongly encouraged” to change its NSR rules to comply with USEPA’s revised NSR Reform provisions which had been promulgated at 67 FR 80187, 12/31/2002. Several of the provisions had been vacated by the court in *State of New York, et. al. v USEPA et al.* (413 F3d 3, D.C. Cir 2005) but the “Plantwide Applicability Limitations” (PAL) provisions, baseline actual emissions timeframe and post project emissions calculation methodology were retained. Since the AVAQMD was designated Federal nonattainment for Ozone it was required by USEPA to submit a revised NSR program in compliance with those remaining portions of the NSR Reform provisions.

At the same time the AVAQMD was also required to ensure that any amendments to its NSR program complied with H&S Code §§42500 et. seq.⁵⁹ This legislation was a direct response to certain provisions of USEPA’s 2002 NSR Reform. The primary purpose of

⁵⁸ The APCO has authority, pursuant to Rule 219(B)(4), to require a permit for any otherwise listed equipment thereby making such specifically identified equipment a “Permit Unit.”

⁵⁹ Commonly referred to as SB288 (SB288 of 2003, ch 467) and codified as H&S Code §§42500 et seq.

the legislation was to prohibit California air districts from revising certain portions of their existing New Source Review rules to less stringent measures than those in place on December 30, 2002. H&S Code §42504(a) generally is a prohibition against “weakening” any pre-NSR Reform provisions. In addition, H&S Code §42504(b) specifically prohibits revisions which would exempt, relax or reduce any of the following requirements: Applicability determination for NSR; definitions of modification, major modification, routine maintenance, repair or replacement; Calculation methodologies; Thresholds; Requirements to obtain NSR or other permits prior to commencing construction; BACT requirements; Air quality impact analysis requirements; Recordkeeping and reporting requirements that makes the recordkeeping less representative or publicly accessible; Requirements for regulation of pollutants covered by NSR; and Requirements for public participation.

The AVAQMD 2006 amendments met these two conflicting requirements by adding an additional analysis in current Rule 1302 that was only applicable to Major Facilities and Major Modifications. All new or modified facilities would first undergo a State NSR analysis be subject to BACT and Offset requirements, if any were applicable.⁶⁰ Then, if a new or modified facility was considered to be a “Federal Major Facility,” using a slightly different calculation method than State level analysis, such a Facility would be exempt from providing an alternative site analysis⁶¹ and could apply for a Plant-wide Applicability Limit (PAL) pursuant to the provisions of Current Rule 1310, if the applicant chose to do so⁶². Since the modifications retained the necessity of all new or modified Facilities to first comply with the State level requirements the MDAQMD determined that the amendments did not violate the provisions of H&S Code §§42500 et seq.⁶³

Subsequently to the AVAQMD’s rule amendments USEPA Region IX opined that the provisions of FCAA §116 (42 U.S.C. §7416), which allowed States and their political subdivisions to be more stringent than FCAA requirements, was applicable to the NSR Reform Provisions. Since California in general required BACT and Offsets at a significantly lower level⁶⁴ than required under the FCAA, USEPA determined that implementation of the NSR Reforms would, in most cases, not result in any additional regulatory flexibility for those projects determined to be “Federal Major Modifications.” In short, the same level of control would be required whether or not the NSR Reform

⁶⁰ Proposed Rule 1302(C)(1-3) for analysis. The applicable BACT and Offset thresholds are found in Rule 1303(A) and (B).

⁶¹ In actual practice the alternative site analysis exemption was not utilized extensively as most Facilities which could utilize Rule 1310 also were subject to provisions of CEQA (Public Resources Code §§21000 et seq) and ended up doing an analysis substantially more comprehensive than the alternative site analysis otherwise required under FCAA.

⁶² Rule 1302(C)(4). Since its adoption in 2006 no Facility has chosen to use the Plant-wide Applicability Limit provisions of Rule 1310.

⁶³ AVAQMD, *Staff Report Proposed Amendments to Regulation XIII (Specifically Rules 1302 – Procedure and 1305 – Emissions Offsets) and Adoption of New Rule 1310 – Federal Major Facilities and Federal Major Modifications for adoption on 8/15/2006*, pgs. 14-15.

⁶⁴ H&S Code §40918(a)(1).

provisions were implemented and the resulting program would still be more stringent than the Federal requirements under the FCAA.

Since the provisions of Rule 1310 were not in place as of 12/30/2002 along with the fact that the AVAQMD's 2006 amendments to Regulation XIII retained the existing stringency in accordance with H&S Code §§42500 et. seq the removal of Rule 1310 will also comply with those provisions. Specifically, the proposed rescission of Rule 1310 will not weaken or otherwise change any requirements that existed in the AVAQMD's New Source Review program as it existed on 12/30/2002. In fact, the only effect of this proposed rescission will be to remove the unused PAL provisions from Regulation XIII⁶⁵. The proposed amendments additionally remove all references and provisions solely applicable to Rule 1310 from proposed Rule 1302.

5. Minor Facility Notice Requirements

In a technical review of the MDAQMD's 2016 version of Regulation XIII USEPA indicated that the rules as submitted were not approvable as they did not provide a full 30-day notice and comment period for a certain subset of Minor Facilities and modifications subject to New Source Review⁶⁶. The AVAQMD Regulation XIII also suffers from this defect in that there are no specific Minor Facility notice and comment provisions in the current version.

USEPA indicated that while 40 CFR 51.160-164, including the full notice requirements, apply to any action subject to preconstruction review that 40 CFR 51.160(e) allowed exclusion of certain sources or activities so long as a proper demonstration that the excluded sources were inconsequential to the attainment and/or maintenance of the NAAQS⁶⁷. USEPA asserted that the justification for the notice levels required for Minor Facilities contained in the 2016 amendment were inadequate citing prior NSR approvals for Tribal areas⁶⁸ and Technical Support Documents (TSDs) for USEPA actions on Sacramento Metropolitan Air Quality Management District's NSR Rules⁶⁹. USEPA indicated that while there was no specific percentage of emissions that would be allowable to be excluded from NSR notice requirements it would use the "rational approach" as outlined in *Alabama Power Co. v Costle*, 636 F.2d 323 (D.C. Cir, 1979) and the concept of "tailoring" the public participation as found in the Federal Operating

⁶⁵ The MDAQMD has historically addressed the flexibility that USEPA was attempting to provide with the PAL provisions via Federally enforceable permit provisions across multiple permits. In addition, the MDAQMD, on a case-by-case basis, uses "process line" permitting where multiple Emissions Units (usually one main Permit Unit with a variety of sub-emissions points) are regulated by a single permit with multiple requirements but a singular emissions limitation for the entire process.

⁶⁶ *USEPA Letter of 12/19/2019*, Comments 1.1.2.a and 1.1.2.b.

⁶⁷ USEPA, Email, K. Nguyen to K. Nowak – *MDAQMD NSR Logistics Call, 2/28/2020* (Hereafter *USEPA Email of 2/28/2020*) attachment titled *02-28-20 Initial EPA Response to MDAQMD Letter Dated January 28*, Clarification #2.

⁶⁸ 76 FR 38748, 7/1/2011.

⁶⁹ *TSD for SMAQMD Rule 214*, 5/06/2011, Docket #EPA-R09-OAR-2013-0064-002 and *TSD for SMAQMD Rule 214/217*, 1/23/2013, Docket #EPA-R09-OAR-2013-0064-002.

Permit (Title V) regulation adoption documents⁷⁰ to determine the sufficiency of any justification.

The proposed amendments do not change the thresholds for Minor Facility NSR notice as set forth in the 2016 amendments. However, they do shift to expressing the notice in absolute numerical terms as opposed to percentages and types of activities. The thresholds for Minor Facility NSR notice remain unchanged by the proposed amendments. Currently Minor Facility NSR notice is required for emissions changes equal to or greater than any of the following:

- 20 tpy of NO_x or VOC.
- 12 tpy of PM₁₀.
- 8 tpy of any single Hazardous Air Pollutant.
- 20 tpy of a combination of Hazardous Air Pollutants.
- 80% of any lower amount of a Hazardous Air Pollutant as established by USEPA rulemaking.
- The significance level for Regulated Air Pollutants as listed in 40 CFR 52.21(b)(23).

In addition, a provision requiring full 30-day notice for Minor Facility NSR actions greater than the thresholds, is proposed to be added. The justification for the Minor Facility NSR Notice Thresholds are contained in Section VI. D. below

6. BACT Requirement Applicability

The proposed amendments clarify but do not substantively change the applicability thresholds for BACT and Offsets. The term “Permit Unit” is retained in proposed 1303(A) as subsections (1) and (2) are based upon the state requirements for BACT found in H&S Code §40918(a)(1). The “Permit Unit” terminology is also retained in Proposed 1303(A)(3) in part because to create a fully enforceable BACT requirement an Emissions Unit would end up requiring a permit. This provision ties into the ability of the APCO under Rule 219(B)(4) to require a permit to ensure compliance with District Rules and Regulations. Proposed Rule 1303(A)(3) is also clarified to indicate that each new or Modified permit unit at a new or modified Major Facility will need BACT. Please also note that as a practical matter any new or modified Permit Unit is extremely likely to be required to have BACT pursuant to Rule 1303(A)(1) or (2) regardless of the status of the underlying Facility be it Major or Minor.

As currently implemented the Rule1303(A)(3) 25 tpy across the board BACT trigger for Facility level analysis creates a slight anomaly with the Major Facility threshold in regards to PM₁₀. As noted in Rule 1303(B)(1) the PM₁₀ Major Facility threshold is 15 tpy. This differential could potentially result in the situation where a Facility could

⁷⁰ 60 FR 45530, 8/21/1995.

require PM₁₀ offsets but not BACT⁷¹. The proposed amendments revise the threshold in 1303(A)(3) to correspond with the Major Facility threshold for ease of use.

The proposed amendments reformat the table in 1303(B)(1) to only show Nonattainment pollutants in accordance with the textual provisions of subsection (B)(1) removing Carbon Monoxide and Lead from the table.⁷² In addition, the term Reactive Organic Compounds (ROCs) has been changed to Volatile Organic Compounds (VOCs) in accordance with a definitional shift in Rule 1301. The original dichotomy between ROC and VOC in Regulation XIII arose when the Federal definition of VOC⁷³ was slightly different from the State definition of ROC⁷⁴ with the State definition being more restrictive. Since this difference has been resolved the District has adjusted the terminology. Please also note that *the 15 tpy threshold for PM₁₀ Major Facility status remains unchanged*. This threshold was added in the 2001 amendments to Regulation XIII.⁷⁵ This threshold was derived from the definitions of the term Significant⁷⁶ and was part of the shift from an aggregate threshold used across multiple nonattainment classifications in SCAQMD to straight compliance with the applicable FCAA thresholds for the specific nonattainment classification of the AVAQMD.

B. EMISSIONS

The proposed amendments to Regulation XIII are not expected to change emissions reductions from those achieved under the current regulation as the thresholds triggering control or other emissions related requirements, save one,⁷⁷ are not changed. The major proposed change is the threshold for public notification which is procedural in nature, shifting from a percentage and activity-based threshold to a numerical one, and should not affect emissions. In addition, most of the other proposed amendments are clarifications of rule language to conform with existing requirements in other District Rules and current District practices. For explanations of specific changes please see the *[bracketed italicized]* notes in Exhibit A and Section VI. I. below.

C. CONTROL REQUIREMENTS

⁷¹ Once again due to the 25 lb/day BACT requirement threshold of 1303(A)(1)) and (A)(2)) this situation has never occurred since the 15 tpy PM₁₀ threshold was added in 2001 as 1303(B)(1) .

⁷² SO_x remains on the table as it is a precursor to the particulate fraction of PM₁₀ for which the District is State nonattainment.

⁷³ 40 CFR 51.100(s).

⁷⁴ 17 CCR §94501(m) and §94508(a)(138). See also: CARB Webpage, *Definitions of VOC and ROG (Revised January 2009)* at https://ww3.arb.ca.gov/ei/speciate/voc_rog_dfn_1_09.pdf for an explanation of the differences in terminology.

⁷⁵ AVAQMD, *Agenda Item 11*, 3/20/2001; AVAQMD, *Resolution 01-03 – Reg XIII*, 3/20/2001; and AVAQMD, *Final Staff Report Amendments to Regulation XIII – New Source Review*, 3/20/2001.

⁷⁶ 40 CFR 51.165(a)(1)(x)(A) and 51.166(b)(23)(i). See also current Rule 1301(GGG).

⁷⁷ The only threshold change proposed in this action is to align the PM₁₀ BACT threshold with the Major Facility threshold of 15 tpy which is technically more restrictive and would potentially result in less emissions due to the application of additional BACT. Once again note that on a practical level this will not result in many additional emissions reductions as most new or modified equipment would be required to apply BACT pursuant to proposed Rule 1303(A)(1) and (2).

Once again, the proposed amendments to Regulation XIII are primarily procedural in nature. There is expected to be no significant change from current practice involving which New or Modified Facilities require what level of control equipment. Proposed changes to specific requirements have been designed to clarify and conform language with District practices and provisions of other District Rules. For explanations of specific changes please see the *[bracketed italicized]* notes in Exhibit A and Section VI. I. below.

D. MINOR FACILITY NOTICE THRESHOLD ANALYSIS

Rule 1302 was substantially reorganized in 2001 to provide a standardized procedure for nonattainment NSR actions as well to allow PSD and Toxic Air Contaminant analysis to be performed in conjunction with and included in the issuance of the resultant permit if such concurrent issuance was desired. The 2006 amendments to Rule 1302 clarified a few issues and added an analysis for Rule 1310. Both sets of changes were also intended to allow the District to eventually apply for “Enhanced NSR” status for the purposes of Federal Operating Permits to allow certain permitting activities at Major Facilities to proceed and issue concurrently if the Facility wished to do so.

In subsequent guidance USEPA has indicated that FCAA §110(a)(2)(C) (42 USC §7410(a)(2)(C)) mandated the provisions of 40 CFR 51.160-164 be applied not only to Major Facilities but also to any stationary source necessary to assure attainment and maintenance of the NAAQS.⁷⁸ This “Minor New Source Review” notice requirement, as discussed in subsection VI. A. 5. above, could exclude a small percentage of emissions from notice so long as an adequate justification could be made⁷⁹ and certain other provisions were specifically included.⁸⁰

The AVAQMD is proposing to add notice provisions specifically to cover the so called “Minor New Source Review” activities. Labels for each type of notice will be provided for clarity. The proposed notice types and thresholds for particular actions are summarized as follows:

**Table 2
Notice Thresholds and Requirements**

Permitting Action/Threshold	Type of Notice	Notice Procedure	Contents/Requirements
Action will require offsets per 1303(B).	Major NSR Notice	°Produce a Notice containing required information.	°Facility and action information. °Location and availability of Documents.
Facility stack height is greater than Good Engineering Practice.	Major NSR Notice		

⁷⁸ USEPA Memo, J. McCabe, Principal Deputy Assistant Administrator, Office of Air and Radiation, *Minor New Source Review Program Public Notice Requirements under 40 CFR 51.161(b)(3)*, 4/17/2012

⁷⁹ MDAQMD attempted such a justification in its 2016 amendments and USEPA in *USEPA Letter of 12/19/2019*, Comment 1.1.2.b. indicated that the justification was inadequate as the percentage of non-noticed emissions in relation to the total inventory was too high. Please note that percentages USEPA cited as “approvable” all were 5% or less (See Footnotes 92 and 93 below).

⁸⁰ *USEPA Letter of 12/19/2019*, Comment 1.1.2.a.

Permitting Action/Threshold	Type of Notice	Notice Procedure	Contents/Requirements
Facility is a Major PSD Facility or has a Major PSD Modification. ⁸¹	Major NSR Notice	<ul style="list-style-type: none"> °Publish Notice on District Website for duration of comment period. °Send notice (and other items) to CARB, USEPA & Affected States. °Send notice to applicant, city &/or county where located, Federal Land Manager potentially affected, Indian Tribe potentially affected and any on list requesting notice. 	<ul style="list-style-type: none"> °30-day comment period & procedures for comments. °Hearing Board review availability and procedures °Ability to request public hearing and procedures (Stack height, PSD and FOP related only). °Increment consumption (PSD only). °Information on rejected comments related to Federal Class I area (if applicable).
Facility has a Federal Operating Permit and action also involves the issuance, renewal or Significant Modification to the Federal Operating Permit. ⁸²	Major NSR Notice		
Provisions from Toxic NSR analysis require notice per Rule 1320.	Toxic NSR Notice	<ul style="list-style-type: none"> °Add provisions required from Rule 1320 to whichever notice type is otherwise applicable to the action if Facility requests it. °Send notice to anyone extra not already on the list for underlying notice type 	See additional requirements in Rule 1320.
Action will result in an emissions change ≥ 20 tpy NO _x or VOC, ≥ 12 tpy PM ₁₀ , or 80% of any other Nonattainment Air Pollutant (none at present).	Minor NSR Notice	<ul style="list-style-type: none"> °Produce a Notice containing required information. °Publish Notice on District Website for duration of comment period. °Send notice (and other items) to CARB, USEPA & Affected States. Send notice to anyone on list requesting notice. 	<ul style="list-style-type: none"> °Facility and action information. °Location and availability of Documents °30-day comment period & procedures for comments. °Hearing Board review availability and procedures.
Action will result in an emissions change ≥ 8 tpy any single Hazardous Air Pollutant, ≥ 20 tpy any combination of Hazardous Air Pollutants, or 80% of a lesser quantity of Hazardous Air Pollutants set forth in EPA rule.	Minor NSR Notice		
Action will result in an emissions change \geq the significance level listed in 40 CFR 52.21(b)(23) ⁸³ .	Minor NSR Notice		
Action doesn't meet any of the above thresholds.	Permit Issuance Notice	<ul style="list-style-type: none"> °Post action and permit on website. 	<ul style="list-style-type: none"> °Information on Facility, Permit, and action taken. °Hearing Board review availability and procedures.

⁸¹ The AVAQMD currently has only 2 Facilities with potential to emit in amounts which might require a PSD permit.

⁸² A "Significant Modification" for Federal Operating Permit Purposes is most often triggered by the necessity of a case-by-case emissions determination pursuant to Rule 3001(T)(3) and (BB). BACT is a case-by-case emissions determination and is required for all new/modified Permit Units at a Major Facility under Rule 1303(A)(3). Currently all Major Facilities within the AVAQMD are also Title V Facilities under Regulation XXX – *Title V Permits*.

⁸³ On a practical basis this will only apply to attainment pollutants as the "significance level" as listed for nonattainment pollutants is greater than the Major Facility threshold found in Rule 1303(B)(1).

The proposed amendments also shift the publication requirement for both Major NSR Notice and Minor NSR Notice away from publication in a Newspaper of general circulation and to website notification as provided for in recent USEPA and CARB Guidance.⁸⁴ In addition, the proposed amendments require a 30-day comment period not only for Major NSR Notice as current practice but also for Minor NSR Notice.⁸⁵ Other provisions are optimized to reflect the order of operations elsewhere in proposed Rule 1302.

The AVAQMD justification for Minor NSR Notice are based on the 2017 Emissions Inventory data set. This inventory was chosen because it was more granular in nature than earlier inventories and thus is easier to segregate out non-stationary emissions.⁸⁶ In addition it does not suffer from incorrect identification of PM fugitive emissions as stationary sources.⁸⁷ Table 3 below provides the results of this analysis for nonattainment pollutants in the AVAQMD.

Table 3
Minor NSR Notice Threshold Analysis
(Numerical Values in Tons per Year)

	NO _x	SO _x ⁸⁸	VOC	PM ₁₀
Minor NSR Notice Threshold	20	N/A	20	12
Nonattainment Major Facility Threshold ⁸⁹	25	N/A	25	15 ⁹⁰
2017 Emissions Inventory Data				
Total Emissions from Inventory	3960	55	10235	6305
Area	344	9	1369	5413
Non-Anthropogenic	2	1	4582	6
Off-Road	829	15	715	102
On-Road	2278	17	882	241
Stationary	507	13	2687	544
Stationary Emissions Breakdown				
Stationary Permitted	498	11	2178	258
Stationary Unpermitted	9	2	509	286
Stationary Permitted Noticed	427	9	1043	37

⁸⁴ USEPA Memo, J. McCabe, Principal Deputy Assistant Administrator, Office of Air and Radiation, *Minor New Source Review Program Public Notice Requirements under 40 CFR 51.161(b)(3)*, 4/17/2012 and CARB Advisory #299, *Air District New Source Review Rules Regarding Electronic Notice*, 06/2018.

⁸⁵ USEPA has issued draft guidance regarding what actions may be taken by a Facility at its own risk during this 30-day comment period. USEPA Memo (Draft for Public Review and Comment), A. Idsal, Principal Deputy Assistant Administrator, *Interpretation of "Begin Actual Construction" under the New Source Review Preconstruction Permitting Regulations*, 3/25/2020. Current indications are that this guidance will not be finalized.

⁸⁶ AVAQMD, *2017 AV Actual Emissions Noticing Breakdown Adjusted.xlsx*

⁸⁷ Fugitive emissions should only be considered as "stationary" if they are located at a Facility on the list of specific source categories contained in 40 CFR 51.165(a)(1)(iv)(C)

⁸⁸ SO_x data is included for informational use as it is a precursor to the sulfate fraction of PM₁₀

⁸⁹ As set forth in current and proposed Rule 1303(B).

⁹⁰ The FCAA Major Source Threshold for PM₁₀ in the MDAQMD is 100 tpy. However, the SIP approved threshold for offsets and Major Facility status is 4 tpy (AVAQMD Rule 1304(d), 6/14/1996) based on an SCAQMD.

Stationary Permitted Not-Noticed	71	2	1135	221
Percentages of Total Emissions Inventory				
%Stationary/Total	13%	24%	26%	9%
%Stationary Permitted/Total	13%	20%	21%	4%
%Stationary Unpermitted/Total	0.2%	3%	5%	5%
%Stationary Permitted Noticed/Total	11%	16%	10%	1%
%Stationary Permitted Not-Noticed/Total	2%	4%	11%	4%
Percentages of Stationary Inventory				
%Stationary Permitted/Stationary	98%	87%	81%	47%
%Stationary Unpermitted/Stationary	2%	13%	19%	53%
%Stationary Permitted Noticed/Stationary	84%	68%	39%	7%
%Stationary Permitted Not-Noticed/Stationary	14%	18%	42%	41%

As indicated above the amount of emissions from Stationary Permitted Emissions Units which would not receive notice is 4% of the total emissions with the exception of VOC. A closer examination of the base inventory data indicates that the source of the high percentage of unnoticed VOC emissions is the direct result of the AVAQMD’s overall emissions profile. In short, the AVAQMD has a large number of very small facilities such as gasoline dispensing stations and only 2 Facilities which are subject to the Title V program due to emissions.⁹¹ Thus, the fact that the largest amount of permitted yet not-noticed emissions in the inventory happens to be fugitive emissions from gasoline transfer and dispensing skews the percentage and does not reflect the actual amount of notice given for such Facilities. While a gasoline dispensing facility might not require notice under the proposed levels set forth in proposed 1302(C)(7)(d) the facility, dependent upon proximity to residential or other receptors, could very well need be noticed under Rule 1401 as an emitter of Benzene, a HAP. If the purpose of the Minor NSR Notice requirements is to ensure public input on potentially impactful Facilities then the Toxic NSR provisions will, working in concert with the NSR provisions, ensure that notice is provided in such circumstances. It is interesting to note that if the fugitive emissions from such gasoline dispensing facilities are excluded from the calculations above the non-noticed VOC emissions drops to only 3% of the emissions inventory. It is also interesting to note that due to the small size of the inventory and the lack of mid-range emitting Facilities reducing the Minor NSR notice trigger level for VOC would not significantly change the percentage of non-noticed VOC emissions.

In the Tribal NSR approval USEPA indicated that 1% of total emissions inventory being “exempt from NSR review⁹²” on a pollutant by pollutant basis was adequate.⁹³ Similarly, USEPA’s approval of Sacramento Metropolitan AQMD’s Minor NSR Notice Threshold indicated that less than 5% of the total emissions inventory being not subject to public

⁹¹ There are actually 4 Title V Facilities in the AVAQMD but 2 of them are landfills which are required to have Title V permits pursuant to regulation regardless of the amount of emissions.

⁹² Please Note: “Exempt from NSR Review” as referenced by USEPA is NOT necessarily the same as receiving minimal notice in the current MDAQMD regulations. Due to the MDAQMD’s inclusion of at least a minimal analysis under Regulation XIII of all Emissions Units at a particular Facility and the extremely low California BACT threshold of **25 lbs/day** most, if not all Emissions Units can be said to “undergo NSR review.”

⁹³ 40 CFR 49.153(c); 76 FR 38748, 38758, 7/1/2011.

notice (excluding SO₂ which was justified differently) was also acceptable.⁹⁴ Given the percentages, the AVAQMD does not expect that the number of not-noticed Permit Units to affect the AVAQMD's ability to attain and/or maintain the NAAQS. Please also note that so called "non-noticed" Permit Units are still publicly posted upon issuance, the background documentation is available, and they may be appealed pursuant to the provisions of H&S Code §42302.1.

In addition to the above justification, the unique situation of the AVAQMD in regards to its nonattainment pollutants must also be considered. The AVAQMD is overwhelmingly impacted by transported air pollution primarily from the South Coast Air Basin and the San Joaquin Air Basin⁹⁵. This results a significant impact on the nonattainment status and design values within the AVAQMD. It must be noted that the design values have shown a distinct downward trend over the years. Unfortunately, as is indicated by previous attainment planning and modeling for the region, the AVAQMD can never completely attain or maintain the NAAQS throughout its entire jurisdiction regardless of the stringency of New Source Review unless and until the upwind neighboring air basins also achieve attainment.

E. BACT AND OFFSETS; REQUIREMENTS AND CALCULATIONS

USEPA has expressed a variety of concerns to other air districts regarding the specific requirements for the calculation of emissions which determines the imposition of BACT and Offsets on a particular new or modified facility as well as concerns regarding the calculation and use of Offsets within Regulation XIII as such are set out in Rules 1304 and 1305.⁹⁶ In its comments to the MDAQMD the specifically enumerated concerns included:

- Language regarding "permit units" and cross references to Regulation II equipment exempt from permit will somehow allow emissions from such units to "escape" the calculation process in Rule 1304 and thus result in BACT and/or Offsets not being required.⁹⁷
- Terms used in assessing the validity of offsets for use, such as "Surplus," "Permanent," and "Quantifiable," are not defined and thus do not provide adequate support for Air Pollution Control Officer determination of offset adequacy.⁹⁸
- "Offsets" obtained from shutdown or modification of unpermitted emissions units were not properly enforceable as they could potentially result in "demand shifting" where removed unpermitted emissions units would be simply be replaced with other unpermitted emissions units.⁹⁹

⁹⁴ *TSD for SMAQMD Rule 214/217*, 1/23/2013, pg. 6-7; Docket #EPA-R09-OAR-2013-0064-002

⁹⁵ 17 Cal Code Regs. §70500(c).

⁹⁶ *USEPA Letter of 12/19/2019*.

⁹⁷ *USEPA Letter of 12/19/2019*, Comment 1.1.1.a. and Comment 1.3.2.

⁹⁸ *USEPA Letter of 12/19/2019*, Comment 1.2.2.a.1. and 1.2.2.a.4.

⁹⁹ *USEPA Letter of 12/19/2019*, Comment 1.2.2.a.2.

- Nontraditional offset provisions do not specify that a SIP approved calculation method is required to ensure that such offsets are real, surplus, permanent, quantifiable and enforceable.¹⁰⁰
- The calculation methodology in Rules 1304 and 1305 applies a “potential to potential” calculation to determine the applicability of BACT and Offsets along with the determination of the amount of offsets needed allegedly in violation of 40 CFR 51.165(a)(2)(ii)(c).¹⁰¹
- The offset inclusion of “previously banked offsets” in the calculation methodology results in a similar “potential to potential” test allegedly in violation of 40 CFR 51.165(a)(2)(ii)(c).¹⁰²
- The applicable rules do not address the necessity for BACT and Offsets in the situation when a facility relaxes a previously applied enforceable emissions limitation and because of such relaxation becomes a Major Facility or when the relaxation itself happens to be a major modification.¹⁰³
- The interpollutant “trading” provisions allegedly do not comply with 40 CFR 51.165(a)(11).¹⁰⁴

It must be noted, however, that most of these enumerated alleged deficiencies are present in the current SIP adopted rule provisions¹⁰⁵ while others are included in subsequent amendments. Specifically, the provisions impacted by USEPA’s concerns are as follows:

- The concern about Rule 219 emissions of exempt equipment “escaping” appears to be the result of a confusion regarding the interrelationships between the applicability provision in current Rule 1300(B)(1)(a) referencing the entirety of Regulation II¹⁰⁶, the provisions of Rule 1304(B)(1)(a) requiring all “Emissions Units” to be included in applicability calculations¹⁰⁷ and the provisions of Rule 219(B)(5) specifically stating that emissions from 219 permit exempt equipment are required to be included in NSR calculations.

¹⁰⁰ USEPA Letter of 12/19/2019, Comment 1.2.2.a.3.

¹⁰¹ USEPA Letter of 12/19/2019, Comment 1.2.2.b.

¹⁰² USEPA Letter of 12/19/2019, Comment 1.2.2.c.

¹⁰³ USEPA Letter of 12/19/2019, Comment 1.2.2.d.

¹⁰⁴ USEPA Letter of 12/19/2019, Comment 1.2.2.e.

¹⁰⁵ SCAQMD Regulation XIII was approved into the SIP at 61 FR 64291, 12/4/1996 and included Rule actions of the SCAQMD Board on 12/7/1995 (Rules 1301, 1302, 1309, 1309.1, 1310 and 1313), 5/10/1996 (Rule 1303) and 6/14/1996 (Rules 1304 and 1306). The AVAPCD (the direct predecessor to the AVAQMD) acquired the SCAQMD rule book as applicable within its jurisdiction as of 6/30/1997 pursuant to statute (Former H&S Code §40106(e); Stats. 1996 Ch. 542, section 1) and the AVAQMD subsequently acquired the AVAPCD rule book as of 12/31/2001 pursuant to statute (H&S Code §41320(c)). USEPA has indicated that SIP changes where formal action by USEPA has not occurred at the time a jurisdictional change is effective are no longer active SIP submittals and any subsequent approval is not effective within the changed jurisdiction (USEPA Letter, D. Jordan Director Air Division USEPA Region IX to R. Corey, Executive Officer, CARB, 4/1/2015). Thus, since the SIP approval for Regulation XIII occurred before 7/1/1977 these rules are in the SIP for the AVAQMD.

¹⁰⁶ The comparable SIP provision in SCAQMD Rule 1301(b) of 12/7/1995 uses the term “Source” as opposed to “Emissions Unit” for applicability. SCAQMD Rule 1302(gg) of 12/7/1995 defines “Source” primarily in terms of “Permit Unit” and thus is somewhat unclear regarding units which might not require a permit pursuant to then applicable SCAQMD Rule 219 of 8/12/1994.

¹⁰⁷ The SIP version of this provision, SCAQMD Rule 1306 of 6/14/1996 also uses the term “Source” and thus has the same problem detailed in footnote 105 above.

- The AVAQMD has long considered the current dictionary definitions of the terms Real, Surplus, Permanent, Quantifiable and Enforceable as generally adequate for use in rulemaking like they are in underlying State and Federal legislation. However, the terms “Real” and “Surplus” were not specifically defined in the SIP version¹⁰⁸ even though they all occur in the current version of Rule 1301¹⁰⁹
- Use of offsets derived from unpermitted emissions units as modified or shutdown appear to have been allowed pursuant to interactions between the SIP versions of Rules 1304, 1306 and 1309. By 2006 such use was specifically allowed under Rule 1305(B)(2)(a)(ii)c. but were specifically required to be enforceable via permit or contract.
- Mobile source emissions reductions are the only nontraditional offsets mentioned in the SIP approved version of Rule 1309 and were required to comply with the provisions in SCAQMD Regulation XVI – *Mobile Source Offset Programs*. Once again pursuant to current Rule 1305(C)(3) such offsets were specifically required to be Real, Surplus, Permanent, Quantifiable and Enforceable and required to be approved on a case-by case basis prior to the issuance of the NSR document by both CARB and EPA. The specific form of such approval was left unspecified.¹¹⁰
- SIP approved 1304(c)(2) in conjunction with 1304(e) and 1306(d)(2) appear to have allowed the use of previously offset emissions in certain calculations. The current versions of Rule 1304(B)(1) and (D)(3) provided a potential emissions (as modified) to fully previously offset potential emissions calculation methodology.
- The SIP approved provisions of 1306 appear to have included “previously banked offsets¹¹¹ in certain calculations. Regardless of this the current provisions of 1304(D)(4)(a)(iii) and 1305(E)(3)(a)(iv) included “previously banked offsets” in the calculations of a Facilities total emissions.
- Relaxation of previously applied emissions limitations is covered by current Rule 1303(B)(3) and 1305(A)(2)(b)(ii)c. and specifically required offsets for such eventuality. In addition, current Rule 1303(A)(3) requires BACT at any new or modified Major Facility regardless of how such modification occurred.
- Interpollutant trading provisions were provided in SIP approved Rule 1309(g). This provision eventually became current Rule 1305(B)(6) and required approval of both CARB and USEPA.
-

The AVAQMD understands that interpretations of certain FCAA act requirements along with their underlying regulatory implementation have been revised since 1996. It is clear that such revisions will, by necessity, require some adjustments in the District’s NSR

¹⁰⁸ “Permanent”, “Quantifiable Emissions” and “Federally Enforceable” are defined in SCAQMD Rule 1302(w), (cc) and (n) respectively

¹⁰⁹ Current Rule 1301(GG), (AAA), (III), (LLL), and (WWW).

¹¹⁰ Potential approval mechanisms at the time included, but were not limited to, SIP approved calculation rule, case-by-case SIP approval in addition to approval of the NSR permit action itself.

¹¹¹ Referred to as an “NSR Balance.”

rules.¹¹² Nevertheless, the FCAA §116 (42 U.S.C. §7416) specifically allows the adoption and implementation of more stringent controls on air pollution than that required under the FCAA. Therefore, any SIP requirement¹¹³ where the ultimate result is more stringent than that achieved under the applicable FCAA provision should be approvable as a SIP revision.

At its most basic, the FCAA requires the adoption of a SIP after the promulgation or revision of a NAAQS for a pollutant which the area is designated nonattainment.¹¹⁴ The general SIP requirements are set forth in Title I, Part D, Subpart 1 of the FCAA¹¹⁵ with specific requirements for Ozone nonattainment areas contained in Subpart 2,¹¹⁶ and specific requirements for Particulate Matter nonattainment areas in Subpart 4.¹¹⁷ Since the AVAQMD has been designated nonattainment for Ozone¹¹⁸ only the general provisions and subpart 2 requirements apply. In terms of BACT and Offset requirements this means that the AVAQMD is required to have a nonattainment new source review permitting program that applies to new or modified facilities emitting or having the potential to emit 25 tpy of VOC or NO_x.¹¹⁹ This NANSR permitting program is required to impose BACT¹²⁰ on such facilities as well as ensure that such facilities provide offsetting emissions reductions or offsets.¹²¹ Due to the District's O₃ nonattainment status the offsetting ratio for O₃ precursors is set at 1.3 to 1.¹²² As discussed below the proposed amendments to Regulation XIII, as did their predecessor regulations, provide equivalent or greater stringency in terms of BACT and Offsets than what is required under the FCAA.

1. Permit Exempt Emissions Units in Calculation Methodology

While USEPA's concerns as expressed in the 12/19/2019 Letter to MDAQMD, specifically comments 1.1.1.a. and 1.3.2., regarding the potential for emissions from units which happen to be AVAQMD permit exempt pursuant to District Rule 219 to somehow "escape" NSR review arises from a misinterpretation of current language, the District will modify certain provisions to avoid any potential future confusion. Historically, the applicability language in Rule 1300(B)(1) and its predecessor rules was interpreted to include all emissions units subject to the

¹¹² The AVAQMD revised Regulation XIII on 3/20/2001 and 8/15/2006 in part pursuant to USEPA's request to address changes in interpretations. USEPA fully participated in those rulemaking actions.

¹¹³ With the exception of those specifically called out in 42 U.S.C. §7416 dealing with certain mobile sources of air pollution, NSPS and NESHAPs requirements.

¹¹⁴ FCAA §110 (42 U.S.C. §7410).

¹¹⁵ FCAA §§171 et seq. (42 U.S.C. §§7501 et seq.)

¹¹⁶ FCAA §§181 et seq. (42 U.S.C. §§7511 et seq.)

¹¹⁷ FCAA §§188 et seq. (42 U.S.C. §§7513 et seq.)

¹¹⁸ 40 CFR 81.305. Specifically, the MDAQMD is classified Severe-17 for the O₃ 1hr standard in the Southeast Desert Modified AQMD and classified Severe -15 for the O₃ 1997/2008/2015 8 hr standards in a portion of San Bernardino County and unclassifiable for the remainder.

¹¹⁹ FCAA §172(c)(5) (42 U.S.C. §7502(c)(5)); FCAA §182(d) (42 U.S.C. §7511a(d)) ; 40 CFR 51.165(a)(1)(iv).

¹²⁰ FCAA §173(a)(2) (42 U.S.C. §7503(a)(2)). Due to specific definitional provisions, BACT in California is, in general equivalent to Federal Lowest Achievable Emissions Rate (LAER).

¹²¹ FCAA §173(a)(1)(A) and (c) (42 U.S.C. §7503(a)(1)(A) and (c)).

¹²² FCAA §182(d)(2) (42 U.S.C. §7511a(d)(2)).

regulatory powers of the District under state law¹²³ regardless of permitting status. Since the jurisdictional provisions of the H&S Code are implemented by the terms of District Rules 201 and 203 the provisions of proposed 1300(B)(1) have been modified to directly reference these two rules.¹²⁴ In addition, to further clarify that all emissions need to be included in the applicable calculations the definitions and use of the terms “Permit Unit” and “Emissions Unit” have been clarified and adjusted when necessary throughout the remainder of the regulation.¹²⁵ Furthermore, the proposed amendments have been updated to standardize the inclusion of fugitive emissions in calculations for only the specified list of sources listed in 40 CFR 51.165(a)(1)(iv)(C).¹²⁶ These proposed changes will ensure that the emissions included in the calculations are, at a minimum, as stringent as those required under the FCAA. In addition, it must be noted that the both the current version and proposed changes to Rule 219¹²⁷, specifically the clarification of subsection (B)(5) will serve as a backstop for the changes proposed to Regulation XIII.

2. Real, Surplus, Permanent, Quantifiable and Enforceable Definitions

In general, the AVAQMD prefers not to include definitions that are the substantially similar, if not identical, to the formulations found in any reputable dictionary. USEPA insists in the 12/19/2019 Letter to MDAQMD, specifically in Comments 1.2.2.a.1 and 1.2.2.a.4¹²⁸ that these terms be specifically defined in Rule 1301. Given this, the District requested and USEPA provided definitional language that they considered approvable for the terms Real, Surplus, Permanent, Quantifiable, and Enforceable. The District has included this language in the proposed amendments to Rule 1301.¹²⁹

3. Enforceability of Reductions from Unpermitted Emissions Units

In comment 1.2.2.a.2. to MDAQMD of 12/19/2019, USEPA indicated that they believed “offsets” derived from the “shutdown” or “modification” of previously unpermitted units were not approvable as they could not be properly enforceable. The expressed concern appears to be that even though actual reductions would be obtained by removing or modifying an unpermitted unit such activities could potentially just “shift the demand” by replacing it with one or more other unpermitted (aka Rule 219 exempt) emissions units. In such a case the Facility might “escape” the need for additional offsets as the emissions from such permit exempt units would not be part of a permit application and thus not be “counted” for NSR purposes.

¹²³ As set forth in California Health & Safety Code §§39002 and 40000.

¹²⁴ See also discussion in Section VI. A. 2. above.

¹²⁵ Proposed Rule 1301(A) and (EEE). See also discussion in Section VI. A. 3. above.

¹²⁶ Proposed Rules 1301(HH), (KK), (HHH), (JJJ); 1304(E)(2)(a) and 1304(E)(3)(a)(iii)

¹²⁷ *Rule 219 Draft Staff Report*

¹²⁸ *USEPA Letter of 12/19/2019*

¹²⁹ Proposed Rule 1301(AA), (CCC), (KKK), (MMM) and (AAAA)

While the overarching concern regarding emissions from Rule 219 exempt equipment “escaping” from inclusion in emissions calculations has been resolved¹³⁰ this remains a legitimate concern. In short, current Rule 1305(B)(2)(a)(ii)c. allows the use of Simultaneous Emissions Reductions (SERs) from shutdown or modification of unpermitted emissions units so long as the owner/operator obtains a permit or has a contract containing Federally enforceable limitations (emphasis added). USEPA is concerned that this provision would allow a Facility to “sneak” a set of Rule 219 exempt units in “under the radar” by only adding or making changes to unpermitted units in a particular action.

This provision has not been used rarely since the 2001 reformulation of Regulation XIII. On a practical basis the stated concern by USEPA has not proven problematic. It is true that if only Rule 219 exempt equipment happened to be involved in a particular change at a Facility it would not be initially detected by the District. However, such a change would inevitably end up being discovered on the next inspection. At that point there would be a good case for issuance of a Notice of Violation alleging circumvention of District Rules.

Despite the lack of historical problems, the AVAQMD agrees with USEPA that using unpermitted unit shutdowns to create SERs are problematic. The only way to make such a provision enforceable would be to require all similar equipment at a Facility to get permits with appropriate conditions which would be cumbersome for the District and cost prohibitive for the Facility. Thus, the District is proposing to remove the word “shutdown” from the unpermitted equipment SER provision in proposed 1304(C)(4)(c).¹³¹ This will be done in conjunction with the proposed shift of all the SER provisions into 1304 to clearly distinguish the calculation and use off SERs from Emissions Reduction Credits (ERCs).¹³² Creating SERs from modifications of previously permit exempt equipment do not result in the same enforcement issues as the equipment in question is required to obtain a permit pursuant to proposed 1304(C)(4)(c) and Rule 219(B)(4).

On a similar note USEPA also indicates that there may be a similar problem with the banking provisions. In AVAQMD the equivalent provision is found in Rule 1309(D)(3)(c) which seems to allow the banking of unpermitted emissions from shutdowns in certain situations. The District is proposing to remove the word “shutdown” from this provision as well to ensure that emissions reductions resulting from the shutdown of unpermitted Emissions Units are not banked.

4. Nontraditional Offset Calculations

USEPA’s Comment 1.2.2.a.3. of 12/19/2019 to MDAQMD indicates that any use of “non-traditional offsets” (aka mobile, area and indirect offsets) requires

¹³⁰ See discussion in Section VI. E. 1. above.

¹³¹ Currently this provision is located in Rule 1305(B)(2)(a)(ii)c.

¹³² ERCs are defined in proposed Rule 1301(Y) as emissions reductions which have been previously banked pursuant to Rule 1309.

additional specificity regarding what procedural steps would be necessary to obtain USEPA approval of such offsets. USEPA also notes that a SIP approved ERC generation rule would be necessary and that any offsets created would need to meet the general offset integrity criteria; namely be real, surplus, quantifiable, permanent and enforceable. In its 2/28/2020 response to MDAQMD questions¹³³ regarding the specifics of case-by-case approval of such offsets USEPA cited a variety of SIP approved “nontraditional ERC” rules¹³⁴ along with a January 2001 Document titled *Improving Air Quality with Economic Incentive Programs*.¹³⁵ This response implies that the only method of obtaining USEPA approval of “non-traditional offsets” would be via the adoption of an ERC calculation rule that was subsequently SIP approved. Such a rule would be appropriately included in the District’s Regulation XIV – *Mobile Source Offset Programs*.¹³⁶

Once again USEPA appears to misunderstand the underlying purpose of Rule 1305 and its interrelationship with the banking provisions in Rule 1309. Rule 1305 is an offset USE rule as opposed to an ERC creation rule. ERCs are created and banked under Rule 1309 and calculation of such ERCs are performed pursuant to the provisions of Rule 1304(D).¹³⁷ Nontraditional ERCs are currently calculated pursuant to a calculation formula approved by the District, CARB and USEPA¹³⁸ and the District has always assumed that a SIP approval was one way to obtain such approval. The District agrees that clearly reiterating the requirement that non-traditional offsets be calculated via a SIP approved rule in both proposed Rule 1304(D)(2)(c) and adding a similar provision or cross reference in 1305(C)(3) is a good idea to help ensure that all ERCs meet the general integrity criteria.

Upon examining the current provisions for nontraditional offsets the District determined that many of the specific requirements for the use of mobile, area, and indirect source offsets are identical with a few additional provisions specific to mobile sources. The District has thus proposed to combine current Rule 1305(B)(3)(a-d) into a single subsection for ease of use. In addition, the District is proposing that all such offsets will be required to be banked prior to use.¹³⁹ This will ensure that any mobile, area and indirect ERCs to be used as offsets will be calculated pursuant to a SIP approved rule. Furthermore, USEPA’s expressed

¹³³ USEPA, *Email of 2/28/2020* attachment titled *02-28-20 Initial EPA Response to MDAQMD Letter Dated January 28*, Clarification #2.

¹³⁴ San Diego County APCD, Rule 27.1 – *Federal Requirements for Alternative Mobile Source Emission Reduction Program*, 8/6/2008; Placer County APCD, Rule 515 - *Stationary Rail Yard Control Emission Reduction Credits*, 2/19/2015; Placer County APCD, Rule 516 – *Rice Straw Emission Reduction Credits*, 12/19/2009; Feather River AQMD, Rule 10.9, - *Rice Straw Emission Reduction Credits and Banking*, 10/6/2014, Butte County APCD Rule 433 - *Rice Straw Emission Reduction Credits*, 4/24/2014 and Yolo-Solano APCD, Rule 3.21 - *Rice Straw Emission Reduction Credits*, 12/10/2008

¹³⁵ USEPA Document EPA-452/R-01-01, January 2001.

¹³⁶ Please note that none of the rules currently in District Regulation XIV have been SIP approved for the AVAQMD.

¹³⁷ Pursuant to current Rule 1309(C)(3).

¹³⁸ Current Rule 1304(D)(2)(c).

¹³⁹ This in effect means that SERs cannot be created via the use of mobile, area or indirect sources.

concern regarding specific procedural steps for approval of any offset package containing these nontraditional ERCs will be specifically addressed in the CARB, USEPA, Federal Land Manager review provisions of proposed Rule 1302(D)(2).

5. BACT and Offset Applicability Comparison Between MDAQMD Provisions and Federal Requirements

In its 12/19/2019 Letter to MDAQMD USEPA Comment 1.2.2.b. notes that current rule provisions¹⁴⁰ allows HAE to equal PTE if all the prior emissions have been previously offset in a permitting action. USEPA indicates that this is not approvable as it might allow certain projects¹⁴¹ to avoid the application of LAER to certain units as required by 40 CFR 51.165(a)(2)(ii)(C).

The language EPA references involves the calculation of applicability for existing emissions units specifically being determined by

...the sum of the difference between the projected actual emissions (as defined in paragraph (a)(1)(xxviii) of this section) and the baseline actual emissions (as defined in paragraphs (a)(1)(xxv)(A) and (B) of this section, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

In its response to a question, USEPA clarified in its February 28, 2020 response to MDAQMD stating that California BACT was in general equivalent to Federal LAER¹⁴² and thus the District's BACT requirements, so long as they were not circumvented, would count for purposes of 40 CFR 51.165. The underlying issue as stated by USEPA is the potential for some Emissions Units "getting out" of BACT and/or Offset requirements especially when such avoidance may occur at Major Facilities or when a Major Modification occurs.

Please note that the BACT/Offset applicability determination concern expressed by USEPA is not an issue for PM₁₀. This is due to the fact that not only is the AVAQMD Federally unclassified for this pollutant the Major Facility threshold in the District for State purposes is 15 tpy. This amount is, of course, much lower than the 100 tpy moderate nonattainment threshold for PM₁₀ and the PSD thresholds for attainment air pollutants specified in the FCAA.¹⁴³ Therefore, the following discussion regarding applicability calculations deal primarily with O₃ and its precursors NO_x and VOC. Please also see Table 4 below for a point by

¹⁴⁰ The equivalent provisions in AVAQMD are found in current Rule 1304(E)(2)(a)(iv)

¹⁴¹ As opposed to specific emissions units.

¹⁴² USEPA, Email of 2/28/2020 attachment titled 02-28-20 Initial EPA Response to MDAQMD Letter Dated January 28, Clarification #2.

¹⁴³ The PM₁₀ major stationary source threshold is found in FCAA §302(j) (42 U.S.C. §7602(j)) and the PSD thresholds are located in FCAA §169 (42 U.S.C. §7479(1)).

point comparison of the AVAQMD BACT and Offset requirements with the associated Federal requirements.

a. BACT Applicability Comparison

Current Rule 1303(A)(1) and (2) require BACT on all permit units that emit or have the potential to emit more than **25 lbs** per day of nonattainment air contaminants. In addition, current Rule 1303(A)(3) impliedly requires that any new or modified permit unit at a Major Facility requires BACT regardless of size. In comparison BACT/LAER is required Federally in the following situations:

- Existing Major Facility where the proposed emissions are “significant”.
- Existing Major Facility where the proposed emissions are nonsignificant BUT are NOT de minimis.
- Existing Major Facility where the proposed emissions ARE de minimis BUT the proposed emissions are also “significant.”¹⁴⁴
- New Major Facilities
- Existing Minor Facility where the proposed emissions are > Major Facility threshold (regardless of whether or not the change is de minimis).
- Existing Minor Facility where relaxation of federally enforceable requirement makes the Facility a Major Facility. NOTE: Only requires BACT on new units AND units that had the enforceable requirement.

Thus, the provisions of current District rules require BACT in the following additional situations:

- Existing Major Facilities where the proposed emissions ARE de minimis AND are not significant.¹⁴⁵
- Existing Minor Facility where relaxation of federally enforceable requirement makes the Facility a Major Facility.¹⁴⁶
- Existing Minor Facility where the proposed emissions are < Major Facility threshold. District requires BACT on any new or modified permit unit emitting > **25 lbs/day**.¹⁴⁷

¹⁴⁴ Can't happen in the AVAQMD because de minimis threshold would be a change that is < Major source threshold over 5 years... aka 25 tpy NOx/VOC and the “Significant” threshold is 40 tpy NOx/VOC.

¹⁴⁵ The District requires BACT on all new/modified permit units at a Major Facility regardless of the project type or size pursuant to Rule 1303(A)(3) .

¹⁴⁶ The District requires BACT on all new/modified permit units once a Facility becomes a Major Facility regardless of relationship of units to the relaxed requirement. Rule 1303(A)(3).

¹⁴⁷ Rule 1303(A)(1) and (A)(2) .

- New Minor Facility. District requires BACT on any permit unit emitting > **25 Lbs/day**.¹⁴⁸

In short, the current AVAQMD Rule formulation means that BACT is required on many more pieces of equipment within the AVAQMD than it would be under the FCAA provisions. Any equipment, regardless of the size of Facility at which it is located, must meet BACT if it emits or has the potential to emit **25 lbs/day** or more of a nonattainment air contaminant. Under the applicable FCAA provisions for a Severe O₃ nonattainment area, BACT would never be required if a new facility was considered a Minor Facility¹⁴⁹ and would not be required if the proposed project at an existing minor facility did not result in the total potential to emit from the facility (after the project) exceeding the threshold to be a Major Facility.¹⁵⁰ Furthermore, BACT would not be Federally required when a Minor Facility proposes a minor modification yet such modification ultimately ends up with overall emissions that are greater than the Major Facility threshold in direct contrast to current AVAQMD rules which require BACT on anything new or modified once the Facility has exceeded or will exceed the Major Facility threshold regardless of the nature of the action causing such exceedance.¹⁵¹ Figure 1 below contains a flow chart regarding the analysis to determine if BACT is required for a particular permit unit within the AVAQMD.

Given the fact that the District's BACT requirements are so much more stringent than the base requirement imposed by the FCAA and USEPA's admission that Federal LAER in general is California BACT¹⁵² it is clear that the MDAQMD provisions on BACT applicability are more stringent than the FCAA. This is especially true due to the provision of current 1303(A)(4) which specifically states that SERs cannot be used to reduce potential emissions (aka proposed emissions) in determining applicability of BACT requirements. That said, the AVAQMD acknowledges that current Rule 1303(A)(3) should be more explicit in its

¹⁴⁸ Rule 1303(A)(1) and (A)(2) .

¹⁴⁹ A Minor Facility under AVAQMD rules is one which emits or has the potential to emit less than 25 tpy NO_x or VOC or 15 tpy PM₁₀. Rule 1303(B)(1). The FCAA the PM₁₀ minor facility threshold for a moderate nonattainment area is a facility emitting or having the potential to emit less than 100 tpy pursuant to FCAA §302(j) (42 U.S.C. §7602(j)) and the PSD major emitting facility threshold is 100 tpy for certain listed Facilities and 250 tpy for all unlisted Facility types (FCAA §169 (42 U.S.C. §7479(1))).

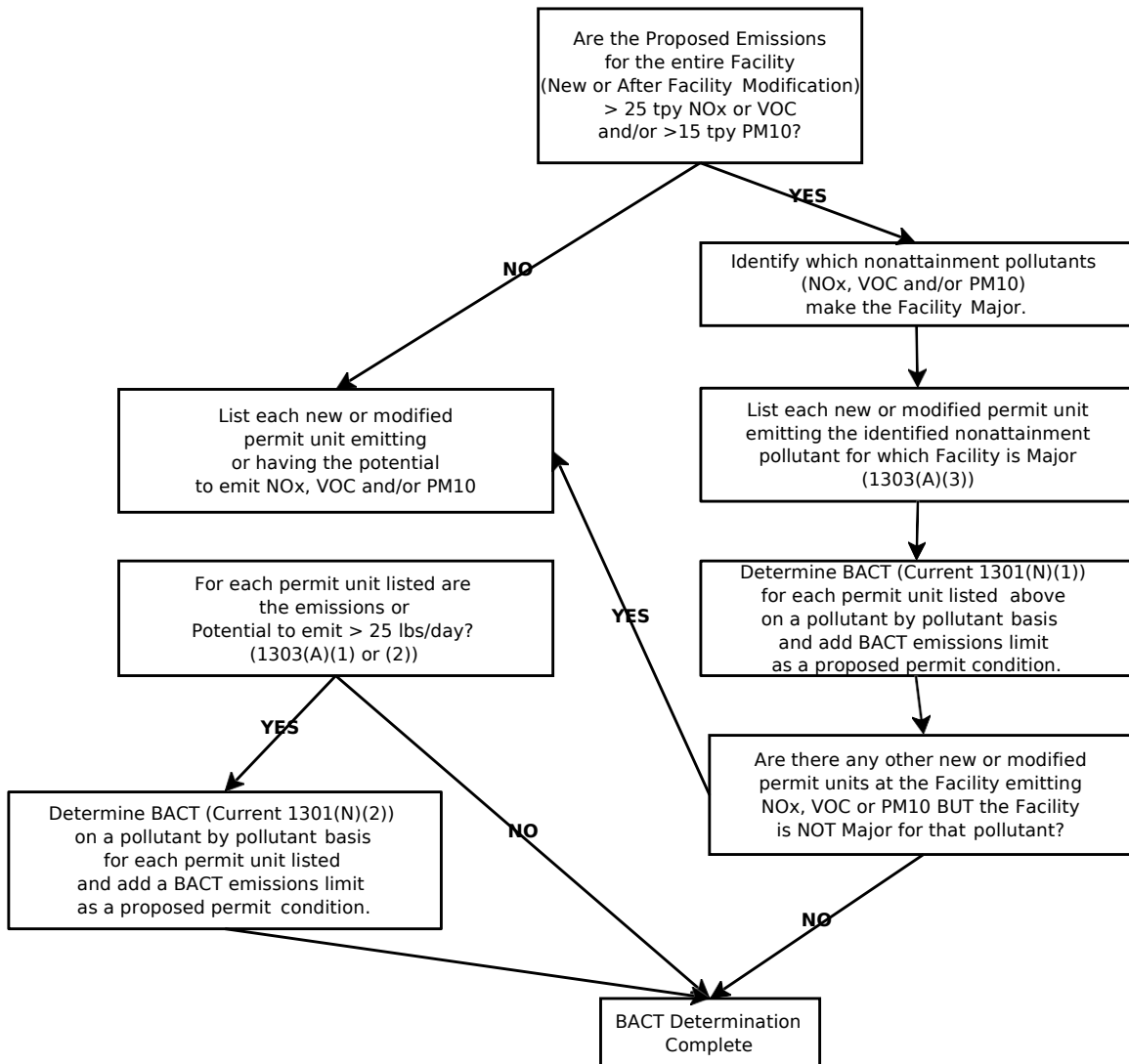
¹⁵⁰ With emissions or potential to emit > 25 tpy NO_x or VOC and/or 100 tpy PM₁₀.

¹⁵¹ Rule 1303(A)(3).

¹⁵² Rule 1301(N) which has the LAER definition (no economic component) for Major Facilities and the CA BACT (economic component) for Minor Facilities and the current Rule 1301(KK) definition of LAER. See also *USEPA, Email of 2/28/2020* attachment titled *02-28-20 Initial EPA Response to MDAQMD Letter Dated January 28, Clarification #2*.

requirements to apply BACT to any new or modified permit unit¹⁵³ at any Major Facility regardless of whether it is a completely new Major Facility, an existing Major Facility with a modification of any size or a previously Minor Facility where a change has resulted in it becoming a Major Facility. The AVAQMD also realizes that the 1303(A)(4) provisions specifically excluding SERs from the applicability determination of BACT also needs to be echoed in the SER provisions proposed for Rule 1304.

Figure 1
AVAQMD BACT Analysis Flow Chart



¹⁵³ Please note that BACT for extremely small units is often already applied by the manufacturer “out of the box” if such unit is new.

b. Offset Applicability Comparison

Technically the District requires offsets in a greater number of situations and to a greater extent than is required by the FCAA. However, the use of a different calculation method in the case of certain situations at existing Major Facilities (PTE as modified to Previously Offset Emissions) has led USEPA to incorrectly conclude that overall the District ends up with less total offsetting emissions reductions than are required by the FCAA. The extra stringency of offsets required for PM₁₀ is obvious in that the AVAQMD is unclassified for this pollutant and thus no offsets would be required under Federal law. The offsets required by the AVAQMD Rules are the result of a State nonattainment designation for PM₁₀.¹⁵⁴

The extra stringency of the offset requirements for O₃ and its precursors is a bit more opaque. Within a Severe O₃ nonattainment area a Federal Major Source is defined as 25 tpy of NO_x or VOC or greater.¹⁵⁵ While the AVAQMD Major Facility threshold is the same it applies whenever there is an emissions increase at an existing Major Facility,¹⁵⁶ and to any Minor Facility that exceeds the Major Facility threshold regardless of the reason for the increase.¹⁵⁷

Federally, offsets are required when there is an:

- Existing Major Facility where the proposed emissions are “significant”.
- Existing Major Facility where the proposed emissions are nonsignificant BUT are NOT de minimis.
- Existing Major Facility where the proposed emissions ARE de minimis BUT the proposed emissions are also “significant.”¹⁵⁸
- New Major Facility.
- Existing Minor Facility where the proposed emissions are > Major Facility threshold (regardless of whether or not the change is de minimis).¹⁵⁹

¹⁵⁴ 17 Cal Code Regs. §60208

¹⁵⁵ FCAA §182(d) (42 U.S.C. §7511a(d)) and 40 CFR 51.165(a)(1)(iv)(A)(1)(iii) and (a)(1)(iv)(A)(2)(v).

¹⁵⁶ There are no De Minimis provisions in the AVAQMD Regulation XIII rules.

¹⁵⁷ Please note that in the case of a Minor Facility exceeding the Major Facility threshold the amount of offsets required is significantly greater than required Federally as such a Facility would need to offset its entire emissions not just the increase that caused it to exceed the threshold.

¹⁵⁸ This scenario is mathematically impossible within the MDAQMD because the de minimis threshold is < Major source threshold over 5 years (aka 25 tpy NO_x/VOC over 5 years) and the Significant threshold is 40 tpy NO_x/VOC.

¹⁵⁹ FCAA only requires offsets of the emissions increase caused by the project.

- Existing Minor Facility where relaxation of federally enforceable requirement makes the Facility a Major Facility.¹⁶⁰

Under current District rules the last two bullet points above not only require offsets of the emissions increase but the offsets would need to cover ALL the emissions of the Facility. In addition, since there is no “de minimis” provisions in the AVAQMD rules even small changes at a Major Facility have often required offsetting emissions reductions.

**Table 4
Comparison of BACT and Offset Requirements**

Facility Type & Change	AV Nonattainment Pollutant Threshold (Federal Thresholds)	AV Requirements	Federal Requirements	Differences (AV vs. Federal)
New Minor Facility	New Facility PE is: <25 tpy of NOx/VOC (Federal = same) <15 tpy of PM ₁₀ (Federal = 100/250 tpy*).	<ul style="list-style-type: none"> ●BACT on New equipment with PE > 25 LBS/day. ●No Offsets Required. 	<ul style="list-style-type: none"> ●NO BACT ●No Offsets Required 	AV requires BACT on more equipment. AV requires offsets for PM ₁₀ .
Existing Minor Facility** Facility PE after change < Major Facility Threshold	Entire Facility PE after modification is: <25 tpy of NOx/VOC (Federal = same) <15 tpy of PM ₁₀ (Federal = 100/250 tpy*).	<ul style="list-style-type: none"> ●BACT on New or Modified equipment with PE > 25 LBS/day. ●No Offsets Required. 	<ul style="list-style-type: none"> ●NO BACT ●No Offsets Required 	AV requires BACT on more equipment. AV requires offsets for PM ₁₀ .
Existing Minor Facility** Proposed Project emissions (by themselves) < Major Facility Threshold, BUT Facility PE after change > Major Facility Threshold	Project PE is: <25 tpy of NOx/VOC (Federal = same) <15 tpy of PM ₁₀ (Federal = 100/250 tpy*) BUT Entire Facility PE after change is: >25 tpy of NOx/VOC (Federal = same) >15 tpy of PM ₁₀ (Federal threshold = 100/250 tpy*)	<u>Facility is now a Major Facility</u> <ul style="list-style-type: none"> ●BACT on all New or Modified equipment. ●Offsets Required: Offset back to 0 for each nonattainment pollutant over threshold @ applicable offset ratio. 	<ul style="list-style-type: none"> ●NO BACT ●No Offsets Required (Note: this Federally this is a Minor Facility making a Minor Modification and is treated same as the above)	AV requires BACT AV Requires Offsets AV requires PM ₁₀ offsets. (Note: AV treats all Minor Facilities becoming Major the same to satisfy H&S Code "No Net Increase" requirements. ¹⁶¹)
Existing Minor Facility** Proposed Project emissions (by themselves) > Major Facility Threshold	Project PE is: <25 tpy of NOx/VOC (Federal = same) <15 tpy of PM ₁₀ (Federal = 100/250 tpy*)	<u>Facility is now a Major Facility</u> <ul style="list-style-type: none"> ●BACT on New or Modified Equipment. ●Offsets Required: Offset any nonattainment emissions <u>increase</u> caused by project. 	<ul style="list-style-type: none"> ●BACT on New or Modified Equipment. ●Offsets Required: Offset any nonattainment emissions <u>increase</u> caused by project. 	Same BACT AV requires more offsets in nonattainment area (back to 0 vs just offset increases Federally). AV requires PM ₁₀ offsets.

¹⁶⁰ FCAA only requires offsets of the emissions increase caused by the project.

¹⁶¹ H&S Code §40918(a)(1).

Facility Type & Change	AV Nonattainment Pollutant Threshold (Federal Thresholds)	AV Requirements	Federal Requirements	Differences (AV vs. Federal)
Existing Minor Facility** Proposed project emissions are Significant*** Entire Facility PE after change > Major Facility Threshold	Project PE > a listed amount in 40 CFR 51.21(b)(23) for any pollutant on the list. Entire Facility PE after change is: >25 tpy of NOx/VOC(Federal = same) >15 tpy of PM ₁₀ (Federal = 100/250 tpy*).	<u>Facility is now a Major Facility</u> Same requirements as above AND need to check PSD applicability requirements.	Technically you can't have a Significant Change at a Minor Facility in nonattainment NSR under Federal Law.	Same differences as above. AV uses this as an additional reminder to check PSD applicability.
Existing Minor Facility** Relaxation in emissions limit makes Facility PE after emissions limit change > Major Facility Threshold	Project contains a relaxation of a Federally enforceable limit taken to make the Facility Minor AND Facility PE after modification are: > 25 tpy of NOx/VOC (Federal = same) >15 tpy of PM ₁₀ (Federal = 100/250 tpy*).	<u>Facility is now a Major Facility</u> ●BACT on New or Modified equipment ●Offsets Required: Offset back to 0 for each nonattainment pollutant over threshold @ applicable offset ratio.	●BACT on any New equipment. ●BACT on any existing equipment subject to the Federally enforceable limit that was changed. ●Offsets Required: Offset all nonattainment pollutant emissions from increase + any existing equipment subject to the federally enforceable limit that was changed @ applicable offset ratio.	AV requires more BACT (any new/modified vs. new/affected by changed limit) AV requires more offsets in nonattainment area (back to 0 vs just offset increases Federally). AV requires PM ₁₀ offsets.
Existing Minor Facility** Facility PE after change > Major Facility Threshold	Facility PE after modification is: > 25 tpy of NOx/VOC (Federal = same) >15 tpy of PM ₁₀ (Federal = 100/250 tpy*).	<u>Facility is now a Major Facility</u> ●BACT on New or Modified equipment ●Offsets Required: Offset back to 0 for each nonattainment pollutant over threshold @ applicable offset ratio.	●BACT for any New or modified equipment. ●Offsets Required: Offset any nonattainment emissions increase caused by project at appropriate offset ratio	Same BACT AV requires more BACT (any new/modified vs. new/affected by changed limit) AV requires more offsets in nonattainment area (back to 0 vs just offset increases Federally). AV requires PM ₁₀ offsets.
New Major Facility	Facility PE is: > 25 tpy of NOx/VOC (Federal = same) >15 tpy of PM ₁₀ (Federal = 100/250 tpy*).	●BACT on New equipment ●Offsets Required: Offset back to 0 for each nonattainment pollutant over threshold @ applicable offset ratio.	●BACT for all New Equipment. ●Offsets Required: Offset back to 0 any nonattainment pollutant emissions at appropriate offset ratio.	Same BACT. Same Offsets for O ₃ precursors. AV requires PM ₁₀ offsets.
Existing Major Facility Proposed project emissions are De minimis** Proposed project emissions NOT Significant***	Facility Current PTE > Major Facility Threshold Project PE + emissions from any modifications in last 5 years are: <25 tpy of NOx/VOC (Federal = same) >15 tpy of PM ₁₀ (Federal = 100/250 tpy*) AND Project PE < amounts in 40 CFR 51.21(b)(23).	●BACT on New or Modified equipment. ●Offsets Required: Any increase in each nonattainment pollutant for which the Facility is Major @ applicable offset ratio.	●NO BACT ●No Offsets Required	AV requires more BACT (any new/modified vs. none) AV requires more offsets (any increase vs. none) AV requires PM ₁₀ offsets.

Facility Type & Change	AV Nonattainment Pollutant Threshold (Federal Thresholds)	AV Requirements	Federal Requirements	Differences (AV vs. Federal)
Existing Major Facility Proposed project emissions are De minimis** Proposed project emissions are Significant***	Facility Current PTE > Major Facility Threshold Project PE + emissions from any modifications in last 5 years are: <25 tpy of NOx/VOC (Federal = same) >15 tpy of PM ₁₀ (Federal = 100/250 tpy*) AND Project PE > amounts in 40 CFR 51.21(b)(23).	●BACT on New or Modified equipment with PE > 25 LBS/day. ●Offsets Required: Any increase in each nonattainment pollutant for which the Facility is Major @ applicable offset ratio.	●PSD BACT requirements are triggered. ●No Offsets Required	AV requires NSR BACT in addition to PSD BACT. AV requires offsets of NOx/VOC and PM ₁₀ (vs. no offsets required Federally)
Existing Major Facility Proposed project emissions NOT De minimis** Proposed project emissions NOT Significant***	Facility Current PTE > Major Facility Threshold Project PE + emissions from any modifications in last 5 years are: >25 tpy of NOx/VOC (Federal = same) >15 tpy of PM ₁₀ (Federal = 100/250 tpy*) AND Project PE < amounts in 40 CFR 51.21(b)(23).	●BACT on New or Modified equipment ●Offsets Required: Any increase in each nonattainment pollutant for which the Facility is Major @ applicable offset ratio.	●BACT on new or modified equipment. ●Offsets Required: Offset any nonattainment emissions increase caused by project @ applicable offset ratio.	Same BACT Same Offsets for O ₃ precursors. AV requires PM ₁₀ offsets. [Note: Using SERs from previously offset equipment may decrease the <u>amount</u> of offsets required]
Existing Major Facility Propose project emissions NOT De minimis** Proposed project emissions are Significant***	Facility Current PTE > Major Facility Threshold Project PE + emissions from any modifications in last 5 years are: >25 tpy of NOx/VOC (Federal = same) >15 tpy of PM ₁₀ (Federal = 100/250 tpy*) AND Project PE > amounts in 40 CFR 51.21(b)(23).	●BACT on New or Modified equipment ●Offsets Required: Any increase in each nonattainment pollutant for which the Facility is Major @ applicable offset ratio.	●BACT on new or modified equipment. PSD BACT requirements are triggered. ●Offsets Required: Offset any nonattainment emissions increase caused by project @ applicable offset ratio.	AV requires NSR BACT in addition to PSD BACT Same Offsets for O ₃ precursors. AV requires PM ₁₀ offsets.

* PSD Major Source threshold

** De Minimis provisions only apply to Major Facilities and are only applicable Federally. There are no De Minimis provisions in AVAQMD Regulation XIII

*** Significance test is a PSD requirement. AVAQMD includes it here as an additional cross check for PSD applicability.

c. Proposed Adjustments to BACT/Offset Applicability Determination

The AVAQMD understands that under the current District rules there is a perceived potential for certain modifications to somehow escape the requirement to impose BACT and/or Offsets in certain situations. To avoid this perception the AVAQMD is proposing to substantively restructure Rules 1304 and 1305 to clearly bifurcate the calculations used to determine the applicability of the BACT and/or Offset requirements from the calculation of how many offsetting emissions reductions are needed in a particular action. In short, all calculations will be moved into Rule 1304 while Rule 1305 will deal solely with the use of offsets. As a practical matter this bifurcation of the applicability calculations from the offset

amount calculations will result in an initial calculation of Emissions Change ignoring any reductions from SERs for applicability purposes and then a recalculation of Net Emissions Change which includes SERs to determine the base amount of offsets necessary. Please note that this may result in a situation where the Emissions Change calculation produces a result indicating offsets will be needed but the Net Emissions Change calculation results in the amount of such offsets being 0. It could also result in a situation when a previously Minor Facility will end up technically becoming a Major Facility and requiring offsets but when the Net Emissions Change is calculated the Facility emissions remain in Minor Facility status.¹⁶²

Please see Figures 2 and 3 in Subsection VI. E. 6. below for a flow chart of current and proposed BACT/Offset applicability and amount determinations.

6. Offset Amount Comparison Between AVAQMD and Federal Calculation Methods

USEPA's Comment 1.2.2.c.¹⁶³ cites 40 CFR 51.165(a)(3)(ii)(J) as disallowing anything except a "potential emissions" to "actual emissions" calculation methodology for the determination of the amount of offsets unless some unspecified "additional flexibility" is included. The applicable language referenced states that the amount to be offsets from a "major modification" must be determined

...by summing the difference between the allowable emissions after the modification (as defined by paragraph (a)(1)(xi) of this section) and the actual emissions before the modification (as defined in paragraph (a)(1)(xii) of this section) for each emissions unit.

This issue and its practical impacts has long been the subject of differing interpretations by and between USEPA and many California Air Districts. While the AVAQMD welcomes the time and effort expended by USEPA staff on this issue it does not appreciate the constant and incessant implications by USEPA that the AVAQMD is not fully committed to protecting air quality within its jurisdiction. It must be noted that the AVAQMD and all of its predecessor agencies have been working on improving air quality since the formation of the very first air quality agency, the Los Angeles County Air Pollution Control District, in the early 1950's. Despite USEPA's insistence that the AVAQMD's offset calculation methods are somehow ineffective the evidence is quite clear

¹⁶² Technically in this situation the District would need to apply BACT to the Minor Facility as if it were Major and then reclassify it as Minor after the Net Emissions Calculation. As a practical matter this BACT application would in most cases have no impact because generally any Emissions Units involved in such a change would have acquired BACT due to having a PTE of > 25 lbs/day under Rule 1303(A)(1) or (2) .

¹⁶³ USEPA Letter of 12/19/2019

that substantial reductions in air pollution have been, and continue to be made, under the current rule formulation.

In the course of discussions regarding definitional language USEPA referenced the TSD for a limited disapproval of Bay Area Air Quality Management District's (BAAQMD) "PTE" to "PTE" calculation methods in its 12/19/2012 NSR Rules amendment.¹⁶⁴ That particular TSD itself cited previous USEPA actions regarding the San Joaquin Valley Air Pollution Control District (SJVAPCD) NSR rules¹⁶⁵ and the Sacramento Metropolitan Air Quality Management District (SMAQMD) NSR rules¹⁶⁶). Also referenced in these discussions were EPA's discussion and analysis of different types of "tests" for NSR *applicability* purposes as contained in USEPA's 2002 NSR Reform Package.¹⁶⁷

EPA approved the SJVAPCD "potential to potential" test conditioned on a showing of annual "equivalency" between the Federal methodology and the actual amount of offsets obtained under the District's test¹⁶⁸. A similar suggestion regarding including provisions for an equivalency demonstration for the difference between Federal and District offset amounts was suggested and implemented for BAAQMD.¹⁶⁹ EPA also noted that a limitation for the "potential to potential" test, such as was included in the SMAQMD rules, to "highly used" previously offset emissions was also approvable. Specifically, the SMAQMD rules limit the use of this test to situations where 80% or greater of the previously offset PTE were reflected in actual emissions and that such prior offsets had been provided within the previous 5 years of the proposed modification.

a. History and Rational of the AVAQMD Previously Offset PTE Provisions

The current version of AVAQMD Regulation XIII in the SIP is the 6/14/1996 version¹⁷⁰. After that approval the Antelope Valley area became its own air district, the AVAPCD, but acquired the SCAQMD rules in effect in its jurisdiction as of that date.¹⁷¹ In 2001 the AVAPCD became the AVAQMD and the statutory

¹⁶⁴ BAAQMD Regulation 2 – *New Source Review*, 12/19/2012; *Technical Support Document Notice of Proposed Rulemaking for Revisions to the California State Implementation Plan Bay Area Air Quality Management District Regulation 2, Rule 1 – Permits, General Requirements, Regulation 2, Rule 2 – Permits, New Source Review*, 8/19/2015 (*TSD for BAAQMD NSR of 8/19/2015*), Docket Number EPA–R09–OAR–2015–0280.

¹⁶⁵ SJVUAPCD Rule 2201 - *New and Modified Stationary Source Review Rule*, 4/21/2011.

¹⁶⁶ SMAQMD Rule 214 – *Federal New Source Review*, 7/23/2012 as approved at 78 FR 53270, 8/29/2013 (Docket #EPA–R09–OAR–2013–0064).

¹⁶⁷ USEPA Webpage, *New Source Review (NSR) Permitting, NSR Regulatory Actions*: <https://www.epa.gov/nsr/nsr-regulatory-actions>, 1/5/2021.

¹⁶⁸ 79 FR 55637, 9/17/2014

¹⁶⁹ *TSD for BAAQMD NSR of 8/19/2015*, pg 119.

¹⁷⁰ 61 FR 64291, 12/4/1996.

¹⁷¹ Former H&S Code §40106(e); Stats. 1996 Ch. 542, section 1

provisions similarly applied the former AVAPCD rule book to the new agency.¹⁷² Thereafter, the AVAQMD reorganized and amended the entire Regulation XIII in 2001 primarily to shift the offset threshold away from an aggregated threshold¹⁷³ and to a threshold based upon the actual nonattainment classification of the area.¹⁷⁴ The subsequent 2006 amendment¹⁷⁵ primarily involved the addition of the then mandatory provisions of NSR reform.¹⁷⁶ Because USEPA has indicated that SIP changes where formal action by USEPA has not occurred at the time a jurisdictional change is effective are no longer active SIP submittals and any subsequent approval is not effective within the changed jurisdiction¹⁷⁷ the 6/14/1996 SCAQMD rules remain the SIP version within the jurisdiction of the AVAQMD.

The SIP version of Rule 1306 specifically allowed the use of the permitted or allowable pre-modification potential to emit in the determination of BACT applicability and the amount of offsets needed for a modification of an existing source.¹⁷⁸ This ability was narrowed to apply to only the offset determination in the 2001 version¹⁷⁹ Specifically, The 2001 version of Rule 1304(B)(1) used the following as the emissions change calculation:

$$\text{Emissions Change} = \text{Proposed Emissions} - \text{Historic Potential Emissions}$$

Historic Potential Emissions were calculated as:

- 0 for a new emissions unit;¹⁸⁰ OR

¹⁷² H&S Code §41320(c)

¹⁷³ The area within SCAQMD's jurisdiction contained multiple O₃ nonattainment classifications and in effect "traded" a lower threshold districtwide to escape the FCAA 1.5 to 1 offset ration required of an Extreme O₃ area by FCAA §182(e)(1) (42 U.S.C. §7511a(e)(1)).

¹⁷⁴ AVAQMD, *Final Staff Report Amendments to Regulation XIII – New Source Review*, 3/20/2001, Pgs. 9-10, 22-23, and 31.

¹⁷⁵ AVAQMD Regulation XIII, 8/15/2006.

¹⁷⁶ 67 FR 80187, 12/31/2002; AVAQMD, *Staff Report Proposed Amendments to Regulation XIII (Specifically Rules 1302 – Procedure and 1305 – Emissions Offsets) and Adoption of New Rule 1310 – Federal Major Facilities and Federal Major Modifications for adoption on 8/15/2006*, pgs. 14-15.

¹⁷⁷ USEPA Letter, D. Jordan Director Air Division USEPA Region IX to R. Corey, Executive Officer, CARB, 4/1/2015

¹⁷⁸ Rule 1306(d)(2). Please note that under this particular iteration of the rules, any Facility which had not undergone NSR (and thus presumably provided offsets) would be required to use actual emissions in the BACT/Offset calculation.

¹⁷⁹ Rule 1303(A)(4) was changed to provide that SERs could not be used to determine BACT applicability. Please note fully offset PTE was in actuality only used in calculations of SERs to reduce the potential for offset applicability despite the rule language which might have indicated other potential uses.

¹⁸⁰ Rule 1304(E)(2)(iii).

- Historic Actual Emissions (HAE) using the average last 2 years¹⁸¹ or most representative of normal operations 2 of the last 5 years;¹⁸²; OR
- The Potential to Emit for the Emissions Unit so long as there was a Federally Enforceable limit and offsets had been fully provided in a documented prior permitting action.¹⁸³

This particular calculation was primarily designed as a way to reduce the amount of offsets needed for changes within a Facility. Please note that in actual permitting actions the only time fully offset PTE was used was when a previously offset Major Facility created Simultaneous Emissions Reductions (SERs) to in effect “fund” a change elsewhere within the Facility.

The AVAQMD acknowledges that the current language is not the clearest reflection of actual use of these provisions. Such language erroneously references 1304(B) and wrongly implies that SERs can be used to reduce “proposed emissions” in the base emissions change calculation as opposed to its use as an offset reduction strategy. However, it must be noted that the fully offset PTE formulation can only be used in a very limited situation due to the following:

- New or Existing Minor Facilities (emissions less than the 1303(B) threshold) do not have “previously fully offset NSR actions” therefore any emissions change would not qualify and thus straight HAE would be used.
- New Major Facilities would likewise not have any “previously fully offset NSR actions” and the HAE would be equal to 0 as the emissions units were new.
- Existing Major Facilities may or may not have “previously fully offset NSR actions” and thus could use this provision internally to “fund” other changes. Please note that current Rule 1305(B)(2)(b) specifically provides that any “leftovers” from such a transaction could not be banked under Rule 1309.

The rationale behind the use of “previously fully offset PTE” was, in part, to ensure that Major Facilities had flexibility to upgrade processes and emissions units without offsetting the same emissions multiple times. It also was an attempt to encourage the upgrading of older equipment for newer less polluting equipment

¹⁸¹ Rule 1304(E)(2)(i).

¹⁸² Rule 1304(E)(2)(ii).

¹⁸³ Rule 1304(E)(2)(iv)..

and to discourage “emissions spiking.”¹⁸⁴ In addition, there is a severe lack of available Emissions Reductions Credits (ERCs) within the AVAQMD and thus modifications at Major Facilities in general are often “self-funded” via the use of SERs.

Currently an existing Facility has a variety of choices when considering modifications, especially when such modification involves previously fully offset emissions units:

1. Obtain Offsets: This is an expensive, and due to the dearth of ERCs within the AVAQMD, often an unviable option. The cost of NO_x ERCs varies widely ranging within California from a high of \$240,844.21 in SCAQMD to a low of \$2,487.49 in ICAPCD.¹⁸⁵ The last monetary (as opposed to in kind or internally created) offset transaction of NO_x within the Mojave Desert Air Basin occurred in 2014 in the MDAQMD at a cost of \$17.50 per pound (\$35,000 per ton).¹⁸⁶
2. SERs: Modify or shutdown other existing units within the Facility to obtain emissions reductions. This in effect self-funds any emissions increases caused by the proposed modification. If the Facility has fully offset Emissions Units it may in effect “reuse” its previously provided offsets in a different capacity.¹⁸⁷ Please note however, that emissions reductions will still occur in such a situation because any new or Modified Emissions Unit(s) at a Major Facility will require BACT¹⁸⁸ including such units which are modified to create SERs. Historically most modifications at Major Facilities have used this option.
3. Replacement: Exchange the old Emissions Unit(s) with exactly the same unit as a functionally identical replacement.¹⁸⁹ While this would not be considered a Modification (no offsets needed) it also results in no emissions change and no potential improvement in air quality within the District. It also tends to discourage modifications that would increase overall Facility efficiency with resultant decreases in emissions as the changes would be limited to identical replacement emissions units.

¹⁸⁴ “Emissions Spiking” as used by the AVAQMD is the practice of running an Emissions Unit or process line at its absolute maximum capacity to inflate the HAE of the emissions unit prior to a modification.

¹⁸⁵ CARB Webpage, *Emissions Reductions Offset Transaction Cost Summary Report*, May 2020, <https://ww2.arb.ca.gov/new-source-review-emission-reduction-credit-offsets>.

¹⁸⁶ If the amount of offsets needed is calculated using the HAE of the emissions unit(s) involved many Facilities view this as a taking of property (namely the previously allowed PTE that was fully offset) without just compensation.

¹⁸⁷ Once again, many Facilities view the permitted emissions limit (PTE) as an asset and thus removal of the value of that asset by discounting it to HAE as a taking of property.

¹⁸⁸ Rule 1303(A)(3).

¹⁸⁹ Such a unit must meet the requirements of current Rule 1301(QQ)(5), 3/20/2001.

4. Status Quo: Don't replace any Emissions Unit(s) unless and until absolutely necessary. This results in extra years of equipment emissions at the current emissions rate and no potential for air quality improvement within the District.
5. Emissions Spiking: Run the Emissions Unit(s) as much as possible for two to five years prior to the change to ensure that the HAE is as high as possible before the modification. The overall result of increased actual emissions (although such increased actual emissions would still be required to remain under the permitted limit for the unit) followed by continued increased actual emissions from the replacement unit(s) even when such replacement units are equipped with BACT.

b. Other Air District's Previously Offset PTE Provisions

BAAQMD's NSR Rules: In 2012 BAAQMD amended its NSR rules¹⁹⁰ and thereafter submitted them as a SIP revision to USEPA. As part of the rules they used a PTE as proposed modified to fully offset PTE calculation method for determining whether and how many offsets were needed for existing facilities when the existing facility had been previously fully offset.¹⁹¹ In its TSD¹⁹² supporting the limited approval/disapproval of BAAQMD's permitting rules¹⁹³, USEPA noted that this provision did not meet either 40 CFR 51.165(a)(3)(ii)(J) as it applied to Federal Major Modification and FCAA §173(c)(1) (42 U.S.C. §7503(c)(1)) in that it did not calculate offsets based on actual emissions.¹⁹⁴ While USEPA did admit that the term "actual emissions" did not specify whether such emissions were meant to reflect actual emissions at the time of the proposed modification or not¹⁹⁵ it did conclude that the BAAQMD formulation using fully offset PTE was not approvable. However, USEPA did indicate that a potential "fix" for this deficiency was for BAAQMD to include in its proposed equivalency procedure Rule 2-2-412 a calculation of "additional offsets" necessary and include such as a "debit" in its determination of equivalency.¹⁹⁶ USEPA also noted that this equivalency showing would only need to be done for Federal Major Sources and Federal Major Modifications as the BAAQMD

¹⁹⁰ BAAQMD Governing Board Item 6, *Continuation of the Public Hearing to Consider Adoption of Proposed Amendments to Air District New Source Review (NSR) and Title V permitting regulations (Regulations 2, Rule 1, 2, 4 and 6) and Adoption of a California Environmental Quality Act (CEQA) Environmental Impact Report (EIR)*, 12/19/2012

¹⁹¹ BAAQMD Rule 2-2-206.2

¹⁹² *TSD for BAAQMD NSR of 8/19/2015*.

¹⁹³ 80 FR 52236, 8/28/2015

¹⁹⁴ *TSD for BAAQMD*, 8/19/2015, pg. 118.

¹⁹⁵ *TSD for BAAQMD*, 8/19/2015.

¹⁹⁶ *TSD for BAAQMD*, 8/19/2015, pg. 119.

rule required offsets for not only those sources but for smaller sources as well.¹⁹⁷

USEPA finalized the limited approval/disapproval of BAAQMDs 2012 version of the rule on 8/1/2016 at 81 FR 50339¹⁹⁸.

BAAQMD subsequently amended its rules on 12/6/2017 which USEPA ultimately approved on 5/21/2018 at 83 FR 23372. In short, the 2017 amendments to the provisions of BAAQMD Rule 2-2-412 adjusted the existing annual demonstration of equivalence to show that overall the amount of offsets obtained under the BAAQMD's calculations was greater than the amount of offsets required for Major Sources under the USEPA interpreted methodology.¹⁹⁹ The 2017 amendments also went into a high degree of detail regarding exactly how this equivalence demonstration was to be made. At the end of each year BAAQMD would determine which permitting actions occurred at Facilities which would be subject to offsets under USEPA's interpreted methodology (identified in the rule as "Federal Major NSR Sources") and compare the number of offsets actually provided under BAAQMD's Rule with what would have been provided under USEPA's methodology. Any shortfall would then be compared against the amount of offsets provided for non-Federal Major NSR Sources (identified in the rule as "Equivalence Credits") along with so called "orphan reductions" from Facilities that shut down but did not bank emissions reduction credits²⁰⁰ and used to make up the shortfall. The 2017 amendments also provided a "backstop" measure in the form of a new provision 2-2-415 which would require offsets to be calculated pursuant to USEPA's methodology unless and until any shortfall in a year was eliminated.

San Joaquin's NSR Rules: Similar to the situation in the BAAQMD, the New Source Review Rules in San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)²⁰¹ contain a PTE as modified to fully offset PTE calculation to determine if offsets are required and for a new or modified stationary source and if so how many are needed.²⁰² SJVUAPCD Rule 2201 also contains an offset equivalency tracking provision in subsection 7 of the rule. The SIP version of SJVUAPCD's rule currently

¹⁹⁷ TSD for BAAQMD, 8/19/2015, pg. 120.

¹⁹⁸ See also the conditional approval of BAAQMD's banking provisions on 12/4/2017 at 82 FR 57133

¹⁹⁹ BAAQMD Staff Report, *Proposed Technical and Administrative Amendments to New Source Review and Title V Permit Programs (BAAQMD NSR Staff Report 2017)*, 10/2017, pg. 21.

²⁰⁰ BAAQMD NSR Staff Report 2017 at pgs. 22-23.

²⁰¹ SJVUAPCD Rule 2201- *New and Modified Stationary Source Review Rule*, 8/15/2019.

²⁰² SJVUAPCD Rule 2201- *New and Modified Stationary Source Review Rule*, 4/21/2011, 3.8.1.3.

appears to be the 4/21/2011 version.²⁰³ The 12/8/2008 version obtained Limited Approval/Limited Disapproval²⁰⁴ and the 12/19/2002 version appears to have had full approval²⁰⁵ although this approval was revoked by USEPA's action on the 2008 version. The PTE as modified to fully offset PTE calculation provisions appear to go back as far as SJVUAPCD's 8/20/1998 version which received a Limited Approval/Limited Disapproval in 2001.²⁰⁶ In all of these actions USEPA appears to have been concerned about the PTE as modified to fully offset PTE calculation but ultimately was satisfied by the provision of an offset tracking system.²⁰⁷ It must be noted, however, that a recent CARB audit of SJVUAPCD's Offset Banking system has resulted in USEPA's questioning the adequacy and efficacy of the offset tracking system.²⁰⁸

Sacramento's NSR Rules: Sacramento Metropolitan Air Quality Management District (SMAQMD) took a slightly different approach with its PTE as modified to fully offset PTE calculation provisions. SMAQMD Rule 214's²⁰⁹ calculation provisions in subsection 411 are all phrased in terms of Historic Potential Emissions (HPE). However, when you look at the subsection 225 definition of HPE it states that HPE is as follows:

- For New Units HPE = 0 (SMAQMD 214:225.1)
- For non-major modification HPE = permitted emissions limit (SMAQMD 214:225.2)
- For any other modification HPE can use the permitted emissions limit if either
 - Actuals are 80% of HPE
 - PTE was fully offset within last 5 years (SMAQMD 214:225.3(a))
- Any other modification that can't use the permitted emissions limit must use Historic Actual Emissions (SMAQMD 214:225.3(b))

²⁰³ 79 FR 55637, 9/17/2014.

²⁰⁴ 75 FR 26102, 5/11/2010.

²⁰⁵ 69 FR 27827, 5/17/2004.

²⁰⁶ 66 FR 37587, 7/19/2001.

²⁰⁷ *TSD for SJVUAPCD Rule 2020, Exemptions, 2201, New and Modified Stationary Source Review Rule*, 11/15/2011 pgs. 14-16. Details of the original tracking system are allegedly found in an 8/24/1999 agreement between the SJVUAPCD and USEPA.

²⁰⁸ CARB, *Review of the SJVUAPCD Emission Reduction Credit System*, June 2020.

²⁰⁹ SMAQMD Rule 214 – *Federal New Source Review*, 7/23/2012

The current version of SMAQMD's Rule 214 is in the SIP.²¹⁰ The 7/20/2011 was also approved²¹¹ as was its previous version, Rule 202²¹².

c. MDAQMD's Proposed Calculation Amendments

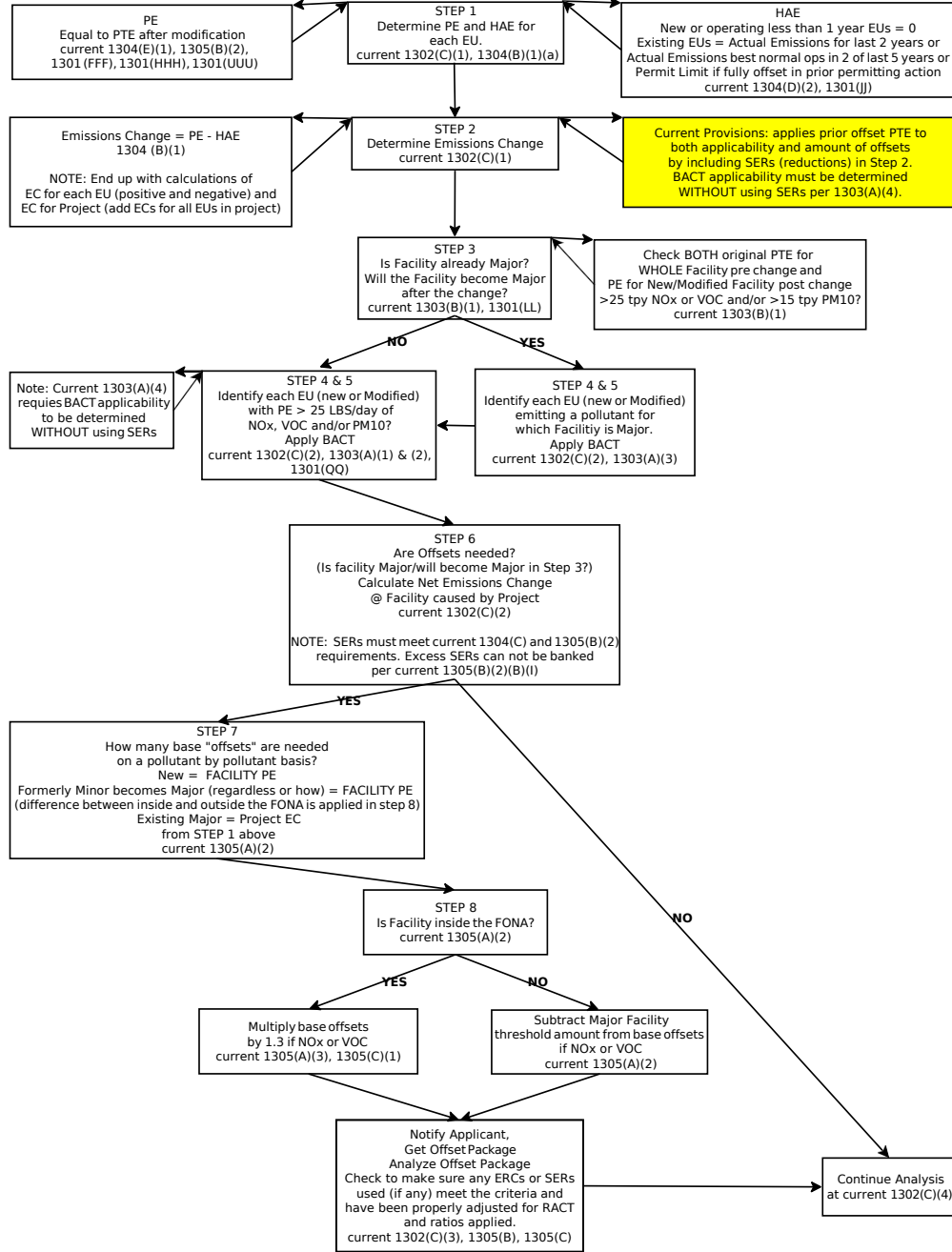
As noted in section VI. E. 5. c. the MDAQMD is proposing to bifurcate the calculations used to determine the applicability of Rule 1303 provisions from the base offset amount calculations required by proposed Rule 1305. Figure 2 shows the flow of the current calculations used to determine both applicability of BACT and Offsets and to determine the number of offsets necessary. Figure 3 shows the same calculation flow under proposed Rule 1304. The areas highlighted in yellow indicate the proposed shift in location of the PTE to fully offset PTE calculation provisions.

²¹⁰ 78 FR 53270, 8/29/2013.

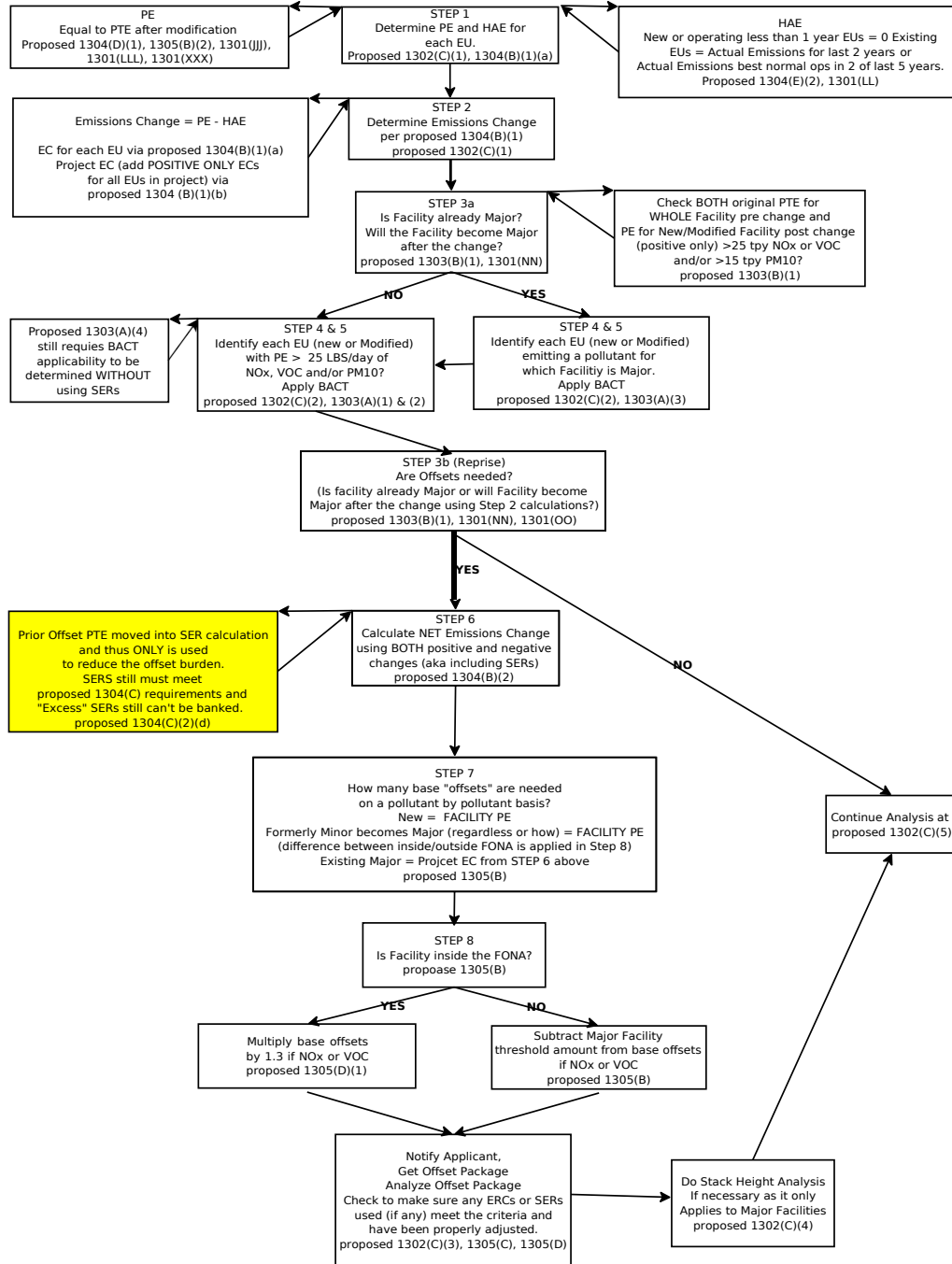
²¹¹ 76 FR 43183, 7/20/2011.

²¹² 50 FR 25417, 6/19/1985.

**Figure 2
Current NSR BACT/Offset Calculation Flow Chart**



**Figure 3
Proposed NSR BACT/Offset Calculation Flow Chart**



As a practical effect this shift merely formalizes the current, SIP approved, method of reducing the offset burden for Major Facilities with Modifications. As noted earlier, the only time the PTE to fully offset PTE calculation was ever used is in the situation when a previously offset Emissions Unit located at an existing Major Facility is modified to create SERs to “fund” a

change elsewhere at the Facility. Tables 5 and 6 provide hypothetical situations to illustrate the differences between the current and proposed calculation methodologies.

**Table 5
Existing Major Facility with Modification Calculation**

Facility 50 tpy NOx PTE as permitted (fully offset); 40 tpy NOx HAE. Proposed Project: New EU = 2 tpy NOx PE 2 Existing EUs each = 2 tpy NOx PTE as permitted, 1 tpy HAE, modified to 0.5 tpy NOx PE 1 Shutdown EU = 2 tpy NOx PTE as permitted, 1 tpy HAE, Shutdown and removed from service.		
	Current AV Calculations	Proposed AV Calculations
1. Determine PE and HAE	Specified above.	Specified above.
2. Determine Emissions Change (EU by EU, and by Project)	EU Change: New EU = 2 PE - 0 HAE = 2 EC Existing EU #1 = 0.5 PE - 1 HAE = -0.5 EC Existing EU #2 = 0.5 PE - 1 HAE = -0.5 EC Shutdown EU = 0 PE - 1 HAE = -1 EC Project Change: 0 EC (add all ECs)	EU Change: New EU = 2 PE - 0 HAE = 2 EC Existing EU #1 = 0.5 PE - 1 HAE = -0.5 EC Existing EU #2 = 0.5 PE - 1 HAE = -0.5 EC Shutdown EU = 0 PE - 1 HAE = -1 EC Project Change: 2 EC (only include positive EC)
3. Is Facility Major or does Project make it Major?	Facility is Existing Major as specified above. BACT is required. Offsets are required.	Facility is Existing Major as specified above. BACT is required. Offsets are required.
4. Are there any new/Modified EUs with PE >25 LBS/day?	If yes add BACT to each EU per 1303(A)(1) or (A)(2)	If yes add BACT to each EU per 1303(A)(1) or (A)(2)
5. Are there any new/Modified EUs as part of the project at the Major Facility?	If yes add BACT to each EU per 1303(A)(3)	If yes add BACT to each EU per 1303(A)(3)
6. Determine Net Emissions Change	Same as 2 above BUT use previously offset PTE instead of HAE. New EU = 2 PE - 0 HAE = 2 EC Existing EU#1 = 0.5 PE - 2 offset PTE = -1.5 EC Existing EU#2 = 0.5 PE - 2 offset PTE = -1.5 EC Shutdown EU = 0 PE - 2 offset PTE = -2 EC Net Emissions Increase = -3	Recalculate 2. Use previously offset PTE as SERs If applicable. New EU = 2 PE - 0 HAE = 2 EC Existing EU#1 = 0.5 PE - 2 offset PTE = -1.5 EC Existing EU#2 = 0.5 PE - 2 offset PTE = -1.5 EC Shutdown EU = 0 PE - 2 offset PTE = -2 EC Net Emission Increase = -3
7. Determine Amount of Offsets Needed	None - Facility NET EC is negative BUT REMEMBER - excess SERs cannot be banked (current 1305(B)(2)(b)(i))	None - Facility NET EC is negative BUT REMEMBER - excess SERs cannot be banked (proposed 1304(C)(2)(d)(iii) and 1305(C)(2)(b))
8. Area is Severe for O₃	N/A	N/A
9. Provide offsets (SERs and/or ERCs)	N/A	N/A
10. End Result	No Offsets needed	No Offsets needed
NOTES:	SERs applied at step 2 to reduce PE. Can't use SERs to get out of BACT (1303(A)(4)) Excess SERs cannot be banked.	SERs applied at step 6 to reduce offset burden. Excess SERs cannot be banked.

**Table 6
Existing Major Facility with Federal Major Modification Calculation**

Existing Major Facility with Federal Major Modification Facility 50 tpy NOx PTE as permitted (20 tpy offset); 40 tpy NOx HAE. Proposed Project: New EU#1 and New EU #2 = 20 tpy NOx PE each 2 Existing Ancient EUs = 15 tpy NOx PTE (never offset) as permitted and 14 tpy HAE, retrofitted to emit 10 tpy NOx PE Shutdown EU = 5 tpy PTE (fully offset), 4 tpy HAE		
Action	Current AV Calculations	Proposed AV Calculations
1. Determine PE and HAE	Specified above.	Specified above.
2. Determine Emissions Change (EU by EU, and by Project)	EU Change: New EU #1 = 20 tpy - 0 HAE = 20 EC New EU #2 = 20 tpy - 0 HAE = 20 EC Existing Ancient EU #1 = 10 PE - 14 HAE = -4 EC Existing Ancient EU #2 = 10 PE - 14 HAE = -4 EC Shutdown EU = 0 PE - 4 HAE = -4 EC Project Change: 28 EC (include all EC)	EU Change: New EU #1 = 20 tpy - 0 HAE = 20 EC New EU #2 = 20 tpy - 0 HAE = 20 EC Existing Ancient EU #1 = 10 PE - 14 HAE = -4 EC Existing Ancient EU #2 = 10 PE - 14 HAE = -4 EC Shutdown EU = 0 PE - 4 HAE = -4 EC Project Change: 40 EC (only include positive EC)
3. Is Facility Major or does Project make it Major?	Facility is Existing Major as specified above. BACT is required. Offsets are required.	Facility is Existing Major as specified above. BACT is required. Offsets are required.
4. Are there any new/Modified EUs with PE >25 LBS/day?	If yes add BACT to each EU per 1303(A)(1) or (A)(2)	If yes add BACT to each EU per 1303(A)(1) or (A)(2)
5. Are there any new/Modified EUs as part of the project at the Major Facility?	If yes add BACT to each EU per 1303(A)(3)	If yes add BACT to each EU per 1303(A)(3)
6. Determine Net Emissions Change	Same as 2 above BUT use previously offset PTE: New EU #1 = 20 tpy - 0 HAE = 20 EC New EU #2 = 20 tpy - 0 HAE = 20 EC Existing Ancient EU #1 = 10 PE - 14 HAE = -4 EC Existing Ancient EU #2 = 10 PE - 14 HAE = -4 EC Shutdown EU = 0 PE - 5 offset PTE = -5 EC Net Emissions Increase: 27 EC	Recalculate 2. Use previously offset PTE if applicable. New EU #1 = 20 tpy - 0 HAE = 20 EC New EU #2 = 20 tpy - 0 HAE = 20 EC Existing Ancient EU #1 = 10 PE - 14 HAE = -4 EC Existing Ancient EU #2 = 10 PE - 14 HAE = -4 EC Shutdown EU = 0 PE - 5 offset PTE = -5 EC Net Emissions Increase: 27 EC
7. Determine Amount of Offsets Needed	Base offsets = 27 (Net Facility Change)	Base offsets = 27 (Net Facility Change)
8. Area is Severe for O₃	Multiply by 1.3	Multiply by 1.3
9. Provide offsets (SERs and/or ERCs)	Provide 35.1 tpy NOx in FONA	Provide 35.1 tpy NOx in FONA
10. End Result	Need 35.1 tpy ERCs	Need 35.1 tpy ERCs
NOTES:	SERs applied at step 2 to reduce PE. Can't use SERs to get out of BACT (1303(A)(4)) Excess SERs cannot be banked (current 1305(B)(2)(b)(i)).	SERs applied at step 6 to reduce offset burden. Excess SERs cannot be banked (proposed 1304(C)(2)(d)(iii) and 1305(C)(2)(b)).

USEPA is concerned that the current SIP approved calculation might conceivably result in an increase in the current emissions inventory District wide and thus potentially jeopardize progress toward attainment with the NAAQS. While the AVAQMD understands this concern the alternative formulations as proposed by USEPA will clearly make actual emissions worse as Facilities refuse to replace aging equipment or run such equipment at high rates to artificially inflate HAE. In addition, an equivalency showing on an annual basis, such as has been approved in BAAQMD and SJVUAPCD, is completely untenable within the AVAQMD due to the fact that any “excess” offsets only occur intermittently when an existing Minor Facility becomes Major and the AVAQMD does not have a so-called “community bank” or other pool of reductions such as those obtained from so called “orphan shutdowns” to make such a showing. Similarly, limiting the use of previously offset PTE to highly used (80% of HPE) and recent (within the last 5 years) as has been approved in SMAQMD does not result in encouragement of modernization of ancient equipment. In short, the application of USEPA’s current policies regarding offset calculations will result in an almost complete cessation of ANY and ALL upgrades which reduce emissions at existing Major Facilities within the AVAQMD.

In short, the underlying disagreement with USEPA boils down to whether or not the AVAQMD’s NSR program, including the calculation methodology for offsets, is at least as, if not more stringent than that required by the Federal Clean Air Act. As noted elsewhere in this Staff Report there are numerous provisions where the AVAQMD is significantly more stringent than the corresponding Federal requirements. The 25 lbs/day BACT threshold is the obvious place where this occurs. What is not quite so obvious in regards to stringency, is the effect of the overall structure of Regulation XIII. The AVAQMD does not, and has never had, a De Minimis provision as allowed under the FCAA. This means that each and every permitting action is in effect “trued up” to the PTE involved each and every time a Modification is made for all Major Facilities. This means that any allegedly “uncaptured” emissions resulting from the AVAQMD’s offset calculation method are more than compensated for by the additional stringency as evidenced by the air quality measurements.

For Example: An existing major facility has a potential to emit of 150 tons per year (, but typically never exceeds 120 tons of actual emissions (80% of their permitted value). If this facility was never previously offset, the rules provision in question does not apply and the point is moot. If the facility was fully offset in a

previously documented permitting action, USEPA's position is that the facility's actual emissions of 120 tons should be used as a baseline to determine whether any changes at the facility trigger control technology or additional offsets, without regard to the previous use of offsets. Current and proposed AVAQMD New Source Review differs and considers the previous use of offsets still valid, for the purposes of further offset requirements at existing Major Facilities only but also requires BACT for all new and modified equipment at the Facility.

Under Federal law and regulation, however, the Facility could completely escape BACT and Offsets along with constructively increasing its actual emissions. This is possible due to the Federal De Minimis provisions which provide no BACT or Offsets are required if the emissions increase is less than a De Minimis amount over a rolling 5-year period; in the AVAQMD this amount would be 25 tpy. Thus, the above hypothetical facility could under Federal rules add 10 tpy of NO_x emissions in years 1, 3, and 6 and not be required to put BACT on any of the new or modified equipment, no offsets would be needed and by the end of the period the permitted emissions would be 180 tpy NO_x (with actual operating emissions of 144 tpy if they continued to run at 80% of permitted value).²¹³ In direct contrast, under the AVAQMD current and existing rules this hypothetical Facility would not only be required to place BACT on any new or modified equipment involved in each year but would also be required to obtain offsets and the permitted emissions limit of 150 tpy would NOT change. Of course, due to the dearth of offsets in the AVAQMD Emissions Reduction Credit Bank the cost of such emissions reductions would be extremely prohibitive. Thus, under the AVAQMD rules such a Facility could modify or shut down other existing emissions units to create SERs. Such modified units would also be required to acquire BACT. Thus, at the end of the 6-year period while no offsets might have been provided under the AVAQMD calculations the ultimate result is less potential for emissions as well as cleaner more efficient equipment.

There is also a fundamental issue of fairness. The emissions reductions, in the case of both ERCs and SERs, must be "Permanent" to be used. Once used this permanence is reflected as an upper emissions limit (PTE) on the permit. If only historic actual emissions are used in subsequent actions the Facility ends up "double offsetting" the differential between the HAE and the previously existing (and fully offset) limit each and every time a

²¹³ Please note in this situation the year 1 increase would not be added to determine if the 25 tpy De Minimis over a rolling 5 years applied.

modification requiring offsets is made. To make matters worse a 1.3 to 1 offset ratio is applied for O₃ precursors due to the nonattainment status of the AVAQMD. The FCAA partially mitigates this burden by allowing De Minimis changes²¹⁴ over a rolling 5-year period and exempting such activities from BACT. Unfortunately, due to CARB's interpretation of the "no net increase" provisions of the Health & Safety Code²¹⁵ coupled with the provisions of SB 288²¹⁶ this option is not available to the AVAQMD.

Furthermore, please note that the most recent Milestone Compliance/Reasonable Further Progress determination as transmitted to USEPA by CARB²¹⁷ shows an incredible amount of emissions reductions over and above that necessary for ultimate compliance with the 75 ppb 8-hour O₃ standard from the 2011 baseline year.²¹⁸ Not all of these reductions can be attributed to the sharp decline in vehicular traffic due to COVID-19 in 2020 as much of it appears to be a continuation of year over year decline in the relevant emissions inventories. If USEPA's concern regarding emissions inventory increases due to the AVAQMD's current calculation formulation were valid you would expect to see some sort of impact in this report. As it is, there is no such impact which provides strong evidence that the AVAQMD's NSR rules as currently implemented are producing overall at least as many emissions reductions as those postulated by USEPA's preferred formulation.

7. Relaxation of Emissions Limitations Resulting in Major Facility Status

USEPA's Comment 1.2.2.d.²¹⁹ to MDAQMD expresses a concern regarding the potential for a Facility to somehow "escape" BACT and or Offsets when it takes a Federally Enforceable limitation to make it a so called "Synthetic Minor Facility" but then requests changes to that limit resulting in an emissions increase. If such increase results in such a Facility becoming a Major Facility the equipment involved in the emissions limit change would be subject to BACT and would require offsets for any such emissions increases as if the Facility had not yet commenced construction.²²⁰

²¹⁴ In the Federal Ozone Nonattainment Area of the District this would be 25 tpy of NO_x or VOC.

²¹⁵ H&S Code §40918

²¹⁶ H&S Code §§42500 et seq (SB288 of 2003, ch 467)

²¹⁷ CARB Letter, R. Corey, CARB to D. Jordan, USEPA Region IX (3/30/2021).

²¹⁸ CARB, *California 2020 Milestone Compliance Demonstration for the 75 Parts per Billion National Ambient Air Quality Standard for Ozone*, (3/30/2021).

²¹⁹ USEPA Letter of 12/19/2019.

²²⁰ 40 CFR 51.165(a)(5)(ii).

The provisions of current Rule 1303(B)(3) already requires BACT and Offsets in such a situation. Under current rule provisions the AVAQMD would treat such an occurrence in the same manner as any other existing Minor Facility which modified in any manner such that the Major Facility threshold was exceeded. In short, BACT would not only be required pursuant to Rule 1303(A)(2) but also under Rule 1303(A)(3)²²¹ and the newly Major Facility would need offsets pursuant to Rule 1303(B)(3). If the increase was for NOx or VOC then the Facility would end up needing to offset its entire emissions, not just the emissions increase(s) resulting from the change in the limit, at an offset ratio of 1.3 to 1.²²² Despite this, the District is proposing to modify Rule 1303(B)(3) to more closely conform to the language found in 40 CFR 51.165(a)(5)(ii). It is not expected that these proposed changes will cause any differences in permitting for affected Facilities.

8. Interpollutant Trading Provisions

In USEPA's Comment 1.2.2.e.²²³ to MDAQMD, USEPA indicated that all interpollutant trading needs to comply with the new provisions of 40 CFR 51.165(a)(11).²²⁴ This provision requires an "approved" area-specific default ratio as established by regulation in a plan, a default interpollutant trading ratio "established in advance" by the air agency or provide a case-by-case formulation process and by its own terms primarily applies to NO_x and VOC. On January 29, 2021 the U.S. Court of Appeals, D.C. Circuit issued an opinion vacating such interpollutant trades.²²⁵

Given the uncertainty surrounding this provision the MDAQMD is proposing to leave proposed Rule 1305(C)(6)²²⁶ with the exception of a footnote citing the court decision. The District will review the provision once the status of interpollutant offsets becomes more certain.

F. RULE 1401 – NEW SOURCE REVIEW FOR TOXIC AIR CONTAMINANTS

There are no substantive changes proposed for Rule 1401. It is included in this action due to the need to update the cross references to Rule 1302.

²²¹ Please note that if such a Minor Facility was built or modified after 1993 odds are it would have already acquired BACT on most if not all of its equipment pursuant to Rule 1303(A)(1)) or (A)(2)). Thus, such a Facility would only need to upgrade to current BACT on the equipment involved if the technology had changed in the interim.

²²² Rule 1305(C)(1)

²²³ USEPA Letter of 12/19/2019.

²²⁴ 83 FR 62998, 12/6/2018.

²²⁵ *Sierra Club et al. vs. USEPA*, 985 F.3d 1055 (D.C. Cir., 1/29/2021).

²²⁶ Current Rule 1305(B)(6).

G. REGULATION XVII – PREVENTION OF SIGNIFICANT DETERIORATION

Regulation XVII as originally adopted by SCAQMD in 1988 and amended in 1989 was intended to allow SCAQMD to fully implement the PSD program within the District’s jurisdiction. As was common at the time the regulations were not included as SIP revisions but instead USEPA and SCAQMD entered into an agreement where SCAQMD would analyze and issue the PSD permits. This agreement was not carried over upon the creation of the AVAQMD in 1977. Therefore, from 1977 on actions required by the PSD permitting program has been performed by USEPA for the AVAQMD despite the existence of Regulation XVII.

The District is proposing in this action to remove the multiple rules of current Regulation XVII and replace it with Rule 1700 which adopts the applicable provisions of 40 CFR 52.21 by reference. The primary difference between the provisions of Rule 1700 and both the current set of rules and the provisions of 40 CFR 52.21 is that of terminology. Various PSD related terms are renamed for ease of use and to avoid confusion with existing terminology elsewhere in the District’s rule book. Table 7 indicates the particular terms and changes proposed.

**Table 7
Proposed PSD Terminology Changes**

Citation	Regulatory Term	Proposed Term	Rational
40 CFR 52.21(b)(1)	Major Stationary Source	Major PSD Facility	Avoids use of term “source”
40 CFR 52.21(b)(2)	Major Modification	Major PSD Modification	Avoids confusion with Regulation XIII term “Major Modification”
40 CFR 52.21(b)(50)	Regulated NSR Pollutant	PSD Air Pollutant	Avoids confusion with term “Regulated Air Pollutant” under Regulation XIII
40 CFR 52.21(b)(12)	Best Available Control Technology	PSD Best Available Control Technology	Allows clear identification of underlying BACT requirement.

H. FCAA §110(L), FCAA §193, AND HEALTH & SAFETY CODE §§42500 ET SEQ. ANALYSIS

FCAA §110(l) (42 U.S.C. §7410(l)) requires that any SIP amendment which might potentially be construed as a relaxation of a requirement provide a demonstration that the proposed change will not interfere with any FCAA requirements concerning attainment or Reasonable Further Progress (RFP). In addition, FCAA §193 (42 U.S.C. §7515) requires that any relaxation of a control requirement in effect in a nonattainment area before 11/15/1990 may not be changed without ensuring that there are “equivalent emissions reductions” in place.²²⁷ Furthermore, H&S Code §§42500 et seq. requires an analysis when amendments are proposed to a nonattainment NSR program to show that such proposed changes are not less stringent than those in existence as of 12/30/2002.

²²⁷ Preconstruction review provisions have been held to be “control requirements” under the FCAA in *Hall v. EPA* 273 F3d 1146 (9th Cir., 2001) and *SCAQMD v EPA* 472 F.3d 882 (D.C. Cir., 2006).

The proposed amendments to Regulation XIII do not relax any NSR related requirements. Most of the proposed amendments are procedural in nature and merely intended to clarify existing provisions and codify current practices. In general, the remaining proposed amendments as indicated in Table 8 conform the requirements to the stringency required by State and Federal law and the regulations promulgated thereunder.

**Table 8
Substantive Proposed Amendments Changing Current Requirements**

Proposed Change	Current Requirement	Stringency
Emissions Unit definition adds “control equipment” to the definition and conforming changes are instituted elsewhere in Regulation XIII. (Proposed 1301(Z))	Emissions Unit technically excluded but Permit Unit included “control equipment” in the definition.	Equivalent.
Addition of provisions regarding stack height exceeding Good Engineering Practice from 40 CFR 51.164 and 51.118. ²²⁸ (Proposed 1301(U), (CC), (II), (UU), (YYY), and 1302(C)(4))	None.	More Stringent.
Addition of language indicating that provisions of 1302(C)(5) are not to be included as a SIP revision ²²⁹ . (Proposed 1302(C)(5)(d))	None.	N/A. Provisions not currently in SIP.
Addition of requirement that applications involving Stack Height which exceed Good Engineering Practice receive Major NSR Notice. (Proposed 1302(C)(7)(b)(ii))	None.	More Stringent.
Specification that Regulation XII Federal Operating Permit actions requiring Major NSR Notice are issuance, renewal, and/or Significant Modifications. (Proposed 1302(C)(7)(b)(iv))	Requirement implied via generic references to Regulation XXX in various places throughout Regulation XIII.	Equivalent.
Addition of language indicating that the provisions of 1302(C)(7)(c) are not to be included in the SIP. (Proposed 1302(C)(7)(c)(iii)).	None.	N/A. Provisions not currently in SIP
Add Minor NSR Notice requirements. ²³⁰ (Proposed 1302(C)(7)(d))	None.	More Stringent.
Addition of 45-day review period for USEPA, CARB and Affected States for permitting actions involving Federal Operating Permits. (Proposed 1302(D)(2)(b)(i))	No such requirement in Regulation XIII. Currently required in Regulation XII.	Equivalent. ²³¹

²²⁸ Added solely to comply with FCAA and Regulatory mandate. No stack in the District has the potential to trigger this provision. It is not expected, due to other unrelated construction requirements, that any stack in the future would ever trigger this provision.

²²⁹ USEPA has requested that a number of provisions not be included in the SIP as they are State only requirements, not specifically required under the FCAA, or have a different approval process other than that provided by the SIP.

²³⁰ Includes not only a numerical threshold but also a percentage calculation to allow for a “quick fix” if the District becomes nonattainment for additional air contaminants.

²³¹ Addition to NSR provisions required to obtain “Enhanced NSR” certification allowing Federal Operating Permit issuance, renewal and/or Significant Modifications to be processed and noticed concurrently with NSR actions.

Proposed Change	Current Requirement	Stringency
Shift the Major NSR Notice publication to website as opposed to newspaper notice. (Proposed 1302(D)(3)(a)(i)b.)	Newspaper Notice.	Equivalent. ²³²
Addition of comment procedures and opportunity to request a public hearing in certain cases as part of Major NSR Notice. Addition of request for public hearing regarding visibility protection and stack height exceeding Good Engineering Practice. (Proposed 1302(D)(3)(b))	Comment procedures implied.	More Stringent.
Addition of 30-day public comment period to Minor NSR Notice. (1302(D)(3)(b)(ii))	No specific public comment period for Minor NSR Facility Notice; H&S appeal period implied.	More Stringent.
Addition of specific requirement to retain backup documentation for NSR action for a minimum of 5 years. (Proposed 1302(D)(4)(f))	No specific requirement in Regulation XIII. However, District retention practice keeps Facility records for at least 5 years after ALL permits at a Facility have expired or been canceled.	Equivalent.
Revises threshold for Major Facility BACT requirement to use the levels in 1303(B)(1). (Proposed 1303(A)(3))	Current language places BACT threshold for PM at 25 tpy as opposed to Major Facility/Offset threshold of 15 tpy.	More Stringent. ²³³
Removes attainment pollutants from the table in 1303(B)(1).	CO and Lead are currently included in the table despite them being attainment pollutants in the District.	Equivalent.
Move all calculations provisions to Rule 1304.	Currently calculations are in both 1304 and 1305	Equivalent.
Bifurcate calculations in Rule 1304 into two distinct calculations, one for Applicability of Rule 1303(A) and (B) (accounting for increases only) and one to determine amount of offsets required (including SERs).	Current 1304 calculations include emissions increases and decreases for both applicability and amount of offsets needed.	Equivalent.
Reorganize and consolidate provisions of Rule 1305. Move SER provisions to proposed Rule 1304.	Current 1305 contains SER provisions.	Equivalent.
Removal of Rule 1310 and related provisions ²³⁴ .	Separate analysis was required in addition to normal analysis for Federal Major Facilities and Federal Major Modifications. Resulted in use of CEQA documents for alternative site analysis and allowed use of PALs.	Equivalent. ²³⁵
Addition of statement that Toxic NSR provisions are not intended as SIP submissions. (Proposed 1401, 1302(C)(5) and 1302(C)(7)(c))	None,	More Stringent.
Shift current rules in Regulation XVII to a single “adopt by reference” style Rule 1700.	Multiple rules providing same requirements.	Equivalent

²³² 81 FR 71613 10/18/2016 and CARB Advisory 299, *Air District New Source Review Rules Regarding Electronic Notice*, June 2018.

²³³ Once again note that as a practical matter this change should not result in many additional units acquiring BACT as most units acquire BACT under Rule 1303(A)(1) and (2) as they emit > 25 **lbs** per day.

²³⁴ Section VI. A. 4. above.

²³⁵ Rule 1302(B)(1)(b)(i)a. also allows use of CEQA for alternative site analysis.

I. PROPOSED RULE SUMMARY

This section gives an overview of the proposed amendments to Regulation XIII. This section will also contain background information regarding the use of specific terms as well as notations regarding legal and practical implications of certain provisions. Certain wording changes may not be discussed herein if they are adequately documented in the *[bracketed italicized]* notations contained in Appendix A. Additional information and citations regarding the source of proposed changes may also be found in the *[bracketed italicized]* notations.

Please also note that this action is intended to be submitted to USEPA as a SIP revision in conjunction with District Rule 219 – *Equipment Not Requiring A Permit*. While certain interactions between Regulation XIII and Rule 219 will be explained here more detailed explanations regarding items specific to Rule 219 can be found in the Staff Report for that rule.

1. Proposed Amended Rule 1300 – *New Source Review General*

In general, the proposed amendments to Rule 1300 are primarily for clarity with some minor formatting changes.

1300(A)(1)(a) – While this section remains unchanged, the use of the term “requirements” continues to be interpreted to include BACT and Offset requirements along with all the other provisions of Regulation XIII both procedural and substantive.

1300(A)(1)(d) – This section remains unchanged. Please note however, as this cross reference is merely part of a statement of purpose not a specific applicable requirement an additional statement “in effect on [date]” is not required.

1300(A)(1)(e) – Adds a cross reference to Rule 1401 – *New Source Review for Toxic Air Contaminants*. As this is merely part of a statement of purpose no reference to the intention that Rule 1401 not be included in the SIP is required at this place.

1300(A)(1)(f) – Provides a cross reference to Regulation XVII – Prevention of Significant Deterioration and Rule 1700 therein.

1300(B)(1) – The removal of the phrase “requires a permit” and change of reference from Regulation II to Rules 201 and 203 insures the provisions of Rule 219 are not impliedly contradicted by Regulation XIII.²³⁶ Specifically Rule 219(B)(5) requires that the emissions from equipment exempt from permit are to be considered in calculations for not only Regulation XIII – *New Source Review* but also Regulation XII – *Federal Operating Permits* and Regulation XVI – *Prevention of Significant Deterioration* unless the particular regulation

²³⁶ Proposed Rule 219 and *Rule 219 Draft Staff Report*, Sections VI. A. and VI. D.

specifically excludes such emissions in the calculation methodology.²³⁷ Historically, the current provision has been interpreted by the District to include emissions from permit exempt equipment in the calculations when such are applicable and it is not expected that this proposed change will result in any procedural differences in the implementation of NSR. The text has also been reformatted.²³⁸

1300(E)(1) – A minor formatting change is proposed for this subsection. In addition, the cross reference to Regulation II in this subsection is retained, as opposed to the change in subsection (B)(1).²³⁹ This retention is necessary to ensure compliance with other provisions contained in Regulation II such as, but not limited to, permit posting requirements and prohibitions against permit transfer without an application for change of ownership.²⁴⁰

1300(E)(2) – Cross reference to Rule 1700 added to conform with rule shift in proposed Regulation XVII.

2. Proposed Amended Rule 1301 – *New Source Review Definitions*

Quotation marks around defined terms have been removed throughout the entire rule, certain terms have been standardized in regards to capitalization of defined terms as well as conditional plurals. Due to the addition and deletion of definitions substantially renumbering of provisions has occurred. In addition, all cross references have been checked and corrected to reflect the proposed amendments elsewhere in the Regulation.

Former 1301(B) – The definition of Actual Emissions Reduction (AER) has been removed as the term is no longer used in the Regulation. All references to AER elsewhere in the regulation have been replaced with more specific references to ERCs and SERs.

Former 1301(E) – The definition of Allowable Emissions has been removed. The only use of this term was found in the definition of “Permanent.” Since the definition of “Permanent” includes a reference to the term “Federally Enforceable” and all provisions contained in the definition of Allowable Emissions are also contained in “Federally Enforceable” this term is superfluous.

1301(K) – The term Begin Actual Construction has not been modified. The interpretation of this term will continue in accordance with currently applicable USEPA Guidance for Major Facilities and Major Modifications.²⁴¹ However, for

²³⁷ For example: the exclusion of fugitive emissions from Potential To Emit (PTE) calculations unless the emissions happen to occur at a Facility belonging to a source category listed in 40 CFR 51.165(a)(1)(iv)(C) as set forth in proposed Rule 1304(E)(2)(a).

²³⁸ USEPA Letter of 12/19/2019, Comment 1.1.1.a and 1.3.2.

²³⁹ USEPA Letter of 12/19/2019, Comment 1.3.2.

²⁴⁰ Rules 206 and 209.

²⁴¹ USEPA Memo, E. Reich, Director, U.S. EPA Division of Stationary Source Enforcement, to U.S. EPA Enforcement Division Directors, Regions I-X, *Interpretation of "Constructed" as it Applies to Activities Undertaken*

those Facilities subject to Minor Facility NSR notice requirements only²⁴² the District will generally follow USEPA's draft guidance as issued 3/25/2020²⁴³ until such time as such guidance is either finalized by USEPA via rulemaking or other mechanism, further guidance is issued, or such guidance is otherwise impacted by a ruling of a court of competent jurisdiction. As is current District policy, any construction by a Facility during the comment period prior to issuance of a permit would remain at the Facility's own risk.

1301(L) – The definition for Best Available Control Technology (BACT) is not modified. However, it must be noted that subsection (L)(4) already complies with provisions of a pending NSR error correction rule.²⁴⁴ Specifically, USEPA is proposing to correct the definition of BACT to include a limitation that it cannot exceed not only NSPS standards under 40 CFR 60 and NESHAPs standards under 40 CFR 61 but also MACT standards under 40 CFR 63. The current language citing appropriate provisions of the FCAA and “regulations promulgated thereunder” already provides this requirement.

Former 1301(O) – The term Best Available Retrofit Control Technology (BARCT) has been removed as it is unused in the regulation.

1301(P) – A definition for Class I Area has been added to clarify the difference between this definition and the definition of Mandatory Federal Class I Area as defined in proposed 1301(OO).²⁴⁵ In short, the difference between these two definitions involves items which may have been designated a Class I Area but are not specifically listed in 40 CFR 81, Subpart D. Mandatory Federal Class I Areas trigger specific requirements regarding Visibility Protection²⁴⁶ while Class I Areas involve impact analysis for PSD purposes.²⁴⁷ A cross reference to the designated Class I Areas found in California²⁴⁸ is provided for ease of use.²⁴⁹

Prior to Issuance of a PSD Permit, 12/18/1978; USEPA Memo, E. Reich, Director, U.S. EPA Division of Stationary Source Compliance, to R. DeSpain, Chief, Air Programs Branch, EPA Region VIII, *Construction Activities Prior to Issuance of a PSD Permit with Respect to "Begin Actual Construction,"* 3/28/1986; USEPA Memo, J. Rasnic, Director, U.S. EPA Stationary Source Compliance, Office of Air Quality Planning and Standards, to B. Turlinski, Chief, Air Enforcement Branch, EPA Region III, *Construction Activities at Georgia Pacific*, 5/13/1993; USEPA Memo, D. Howekamp, Director, Air and Toxics Division, EPA Region IX, to all Region IX Air Agency Directors and NSR Contacts, *Preconstruction Review and Cons*, 11/4/1993; USEPA Letter, J. Seitz, Director, EPA Office of Air Quality Planning and Standards, to C. Williams, Commissioner, Minnesota Pollution Control Agency, 12/13/1995; and 61 FR 38250, 38270-28271, 7/23/1996.

²⁴² Proposed Rule 1302(C)(7)(d).

²⁴³ USEPA Webpage, *Begin Actual Construction*, https://www.epa.gov/sites/production/files/2020-03/documents/begin_actual_construction_032520_2.pdf

²⁴⁴ This rule as of 1/29/2021 has been signed but not yet published. USEPA Webpage, *Final NSR Error Correction Rule*, <https://www.epa.gov/nsr/nsr-regulatory-actions>.

²⁴⁵ USEPA Letter of 12/19/2019, Comment 2.1.

²⁴⁶ Proposed Rule 1302(B)(1)(c).

²⁴⁷ Proposed Rule 1302(B)(1)(d).

²⁴⁸ 40 CFR 81.405.

²⁴⁹ Cross references to Class I areas in other states are not included as the AVAQMD boundaries are over 100 kilometers from the nearest state line.

1301(Q) – Commence Construction has been clarified to cross reference PSD requirements.²⁵⁰ Please note that this definition is initially triggered by permitting actions while “Begin Actual Construction” is solely an activity-based trigger.²⁵¹

Former 1301(W) – The term Dedicated Cargo Carrier is removed as it is not used in the Regulation.

1301(U) – A definition for Dispersion Technique has been added to implement stack height provisions of 40 CFR 51.164 and 51.118.²⁵² Since there are no stacks currently in the District which might trigger these provisions the definition is provided by reference to 40 CFR 51.100(hh).

1301(Z) – The Emissions Unit definition has been clarified to include air pollution control equipment.²⁵³

1301(AA) – A definition for Enforceable has been added at USEPA’s request. Please note there are additional requirements contained in the definition of Federally Enforceable.²⁵⁴

Former 1301(DD) – The definition of Essential Public Service is removed as it is now provided by reference by Rule 1700(B).

1301(CC) – An Excessive Concentration definition has been added to implement stack height provisions of 40 CFR 51.164 and 51.118.²⁵⁵ Since there are no stacks currently in the District which might trigger these provisions the definition is provided by reference to 40 CFR 51.100(kk).

Former 1301(EE) - The term Executive Officer referring to the Executive Officer of the California Air Resources Board has been removed as the term is no longer used in the Regulation.

1301(EE) – Federal Class I Area has been added pursuant to USEPA’s request. Please see explanation regarding Class I Area definition in proposed Rule 1301(P), above and Mandatory Federal Class I Area definition in proposed Rule 1301(OO).²⁵⁶

1301(FF) – A definition for Federal Land Manager has been added pursuant to USEPA’s request.²⁵⁷

²⁵⁰ USEPA Letter of 12/19/2019, Comment 1.2.1.c.

²⁵¹ Proposed Rules 1302(D)(5)(a)(iv) and (D)(6)(a)(iv).

²⁵² Proposed Rule 1302(C)(4). See Also: USEPA Letter of 12/19/2019, Comment 1.1.3.a.

²⁵³ Subsections VI. A. 3. and VI. E. 1. above. See Also: USEPA Letter of 12/19/2019, Comments 1.1.1.a. and 1.2.1.a.

²⁵⁴ Proposed Rule 1301(GG).

²⁵⁵ Proposed Rule 1302(C)(4). See Also: USEPA Letter of 12/19/2019, Comment 1.2.2.a.1.

²⁵⁶ USEPA Letter of 12/19/2019, Comment 2.1.

²⁵⁷ USEPA Letter of 12/19/2019, Comment 1.2.1.e.

1301(HH) – Fugitive Emissions has been slightly modified to more closely conform with definition in 40 CFR 51.165(a)(1)(ix).²⁵⁸ Previously included language regarding “activities of man” appears to have been the result of industry concern that naturally occurring dust from desert terrain could somehow be included in emissions calculations. Proposed changes elsewhere in the regulation to specifically include in Fugitive Emissions only those emissions “directly related to the Emissions Unit(s)” at Facilities belonging to a category listed in 40 CFR 51.165(a)(1)(iv)(C) renders that prior language unnecessary. Please note that all calculation methods have been relocated to proposed Rule 1304.

1301(II) – A Good Engineering Practice definition has been added to implement stack height provisions of 40 CFR 51.164 and 51.118.²⁵⁹ Since there are no stacks currently in the District which might trigger these provisions the definition is provided by reference to 40 CFR 51.100(ii).

1301(KK) – Historic Actual Emissions is proposed to be modified to add more specific reference to the list of Facility categories found in 40 CFR 51.165(a)(1)(iv)(C).²⁶⁰ Please note that all calculation methods now are located in Proposed Rule 1304.

1301(OO) – Mandatory Class I Federal Area/Mandatory Federal Class I Area has been added.²⁶¹ The term used subsequently in the Regulation is Mandatory Federal Class I Area. Please see explanation under Class I Area definition in proposed Rule 1301(P), above.

1301(RR) – Modeling definition proposes to add a cross reference to 40 CFR 51 Appendix W at USEPA’s request for clarity.²⁶² References to USEPA’s approval requirements are included to allow use of future revisions to Appendix W without needing to modify this definition.

1301(SS) – Current definition of Modification is circular by using the term internally in the definition in subsection (1)(c). Replacing this term with “alteration” will avoid this problem. In addition, specific references to “replacement Emissions Unit(s)” have been added for clarity and internal definitional language consistency.

Please note that the provisions in Proposed Rule 1301(SS)(1)(c)(iv), while unchanged from previous, are more stringent than those found in 40 CFR 51.165(a)(1)(xxi). That provision limiting replacement units to non-Major Facilities and non-Major Modifications was derived from a USEPA comment²⁶³

²⁵⁸ USEPA Letter of 12/19/2019, Comment 1.2.1.b.

²⁵⁹ USEPA Letter of 12/19/2019, Comment 1.1.3.a.

²⁶⁰ USEPA Letter of 12/19/2019, Comment 1.2.1.a.

²⁶¹ USEPA Letter of 12/19/2019, Comment 2.1.

²⁶² USEPA Letter of 12/19/2019, Comment 1.1.1.b.

²⁶³ USEPA Letter, M. Haber to C. Fryxell, 3/10/1995, MDAQMD Final Staff Report Regulation XIII – New Source Review 3/25/1996, Appendix C pg C3, 3/25/1996.

to the MDAQMD “to allow the retention of the exemption” from Modification. It is also important to note that a particular change to a Permit Unit must result in a Net Emission Increase as calculated pursuant to proposed Rule 1304(B)(2) to qualify as a Modification.

1301(TT) – Definition of Motor Vehicle has been modified to conform with Rule 219 provisions and the relevant sections of the California Vehicle Code.

1301(UU) – Definition of Nearby has been added to implement stack height provisions of 40 CFR 51.164 and 51.118.²⁶⁴ Since there are no stacks currently in the District which might trigger these provisions the definition is provided by reference to 40 CFR 51.100(jj).

Former 1301(SS) – Definition of Net Air Quality Benefit has been removed as the term is no longer used in the regulation.

1301(XX) – Nonattainment Air Pollutant is revised to include a citation to 40 CFR 81.305.²⁶⁵ In addition, language has been added to clarify that pollutants designated under 40 CFR 81.305 are to be referred to as Federal Nonattainment Pollutants while those designated under H&S Code §39607 are referred to as State Nonattainment Pollutants. Please note that the term Regulated Air Pollutant as defined includes precursors so the notation “and their precursors” in this definition is unnecessary. See also definition for Ambient Air Quality Standard as proposed in Proposed Rule 1301(G).

1301(YY) – A definition for Nonattainment Area has been added to correspond with the definition of Nonattainment Air Pollutant and clarify the difference between Federal and State Nonattainment Areas.²⁶⁶

Former 1301(WW) – The term Nonpermitted Exempt Unit has been removed as it is no longer used in the Regulation.

1301(BBB) – The term Offset Emission Reductions (Offsets) definition has been modified to clarify that Offsets are ERCs and SERs as used pursuant to the provisions of Proposed Rule 1305. A cross reference to SER calculation procedures in 1304(C) is also added.

1301(CCC) – Definition of Permanent has been modified per request to conform with USEPA’s preferred language.²⁶⁷

1301(GGG) – The citation to an applicable test method has been removed from the PM₁₀ definition pursuant to USEPA’s request.²⁶⁸ The citation in question is

²⁶⁴ USEPA Letter of 12/19/2019, Comment 1.1.3.a.

²⁶⁵ USEPA Email, L. Yannayon to K. Nowak, *Re After Action Report, 3/25/2020* (USEPA Email of 3/25/2020), Attached file *1301 DD 2020 23 Mar + EPA*.

²⁶⁶ USEPA Letter of 12/19/2019, Comment 3.3.

²⁶⁷ USEPA Letter of 12/19/2019, Comment 1.2.2.a.1.

²⁶⁸ USEPA Email of 3/25/2020, Attached file *1301 DD 2020 23 Mar + EPA*.

used for atmospheric measurement of PM only. Language has been added to clarify that condensable PM is included as part of PM₁₀ for calculations performed on or after 1/1/2011 pursuant to 40 CFR 51.165(a)(1)(xxxvii).²⁶⁹

1301(HHH) – The definition of Potential to Emit remains unchanged despite USEPA’s concerns regarding cross references to Regulation II rules.²⁷⁰ The MDAQMD has determined that the cross references contained in this definition are appropriate.

1301(III) – The table in the definition of Precursor is modified to include PM_{2.5} for clarity as this pollutant is technically included via the definition of Regulated Air Pollutant in Proposed Rule 1301(SSS).²⁷¹ H₂S has been removed from the table as it does not form a secondary air pollutant.

1301(JJJ) – Proposed Emissions has been modified to utilize term post-modification to avoid confusion with the defined term Modified. Also added clarification per USEPA request that this definition specify that Fugitive Emissions for those Facilities belonging to a category listed in 40 CFR 51.165(a)(1)(iv)(C) are included.²⁷²

1301(KKK) – A definition of Quantifiable has been modified to conform to USEPA’s preferred language.²⁷³

Former 1301(KKK) - The term Reactive Organic Compound (ROC) has been removed. It was originally included in the Regulation when the Federal definition of Volatile Organic Compound (VOC)²⁷⁴ excluded a slightly different set of non-reactive emissions. Currently the definitions of ROC and VOC are the same and thus this term has been removed from the Regulation.

1301(MMM) – The term Real has not been modified as it complies with USEPA’s preferred language.²⁷⁵

1301(PPP) – The term Registry has been expanded to include the term “ERC Registry” as that is the term in common usage within the District.

1301(RRR) – In the definition of Seasonal Source the term “Permit Unit” has been changed to Emissions Unit in to clarify applicability.²⁷⁶

²⁶⁹ USEPA Letter of 12/19/2019, Comment 1.2.1.d.

²⁷⁰ USEPA Letter of 12/19/2019, Comment 1.3.2.

²⁷¹ USEPA Letter of 12/19/2019, Comments 1.2.1.d. and 3.1.

²⁷² USEPA Letter of 12/19/2019, Comment 1.2.1.a.

²⁷³ USEPA Letter of 12/19/2019, Comment 1.2.2.a.1.

²⁷⁴ Current Rule 1301(ZZZ).

²⁷⁵ USEPA Letter of 12/19/2019, Comment 1.2.2.a.1.

²⁷⁶ Subsections VI. A. 3. and VI. E. 1. above.

1301(UUU) – The table in the definition of Significant has been revised to only include Nonattainment Areas and Nonattainment Pollutants.²⁷⁷ Attainment pollutant amounts are incorporated by reference in Proposed Rule 1700(B).²⁷⁸ The classification references have been adjusted to specify “Severe Ozone Federal Nonattainment Area” and “Moderate PM₁₀ Federal Nonattainment Area” for clarity. Please note that the emissions levels as listed in the table have not changed.

1301(WWW) – A definition of the South Coast Air Quality Management District (SCAQMD) has been added as it is referenced in the Regulation, specifically in proposed Rule 1309 regarding ERC’s credited by SCAQMD and held by companies within the AVAQMD.

1301(XXX) – A definition of Stack has been added at USEPA’s request.²⁷⁹

1301(YYY) – A Stack In Existence definition has been added to implement stack height provisions of 40 CFR 51.164 and 51.118.²⁸⁰ Since there are no stacks currently in the District which might trigger these provisions the definition is provided by reference to 40 CFR 51.100(gg).

1301(AAAA) – Surplus has been modified to reflect USEPA’s preferred language. The provision “not otherwise required by Federal, State or District law, rule, order, permit or regulation” is intended to include, but not be limited to, items such as:

- Anything contained in the Federally approved SIP effective within the jurisdiction of the District.
- Any requirement, regulation or measure that the District or the State has included in a legally required and publicly available list of measures scheduled for adoption and would, by its terms, be effective within the jurisdiction of the District.
- Any requirement, regulation or measure for which the District or the State has issued a public notice of intent to adopt and would, by its terms, be effective within the jurisdiction of the District.
- Any specific regulatory or permitting requirement legally applicable to an Emissions Unit or Facility such as RACT, BACT, LAER, NSPS, NESHAP, and/or BACM.
- Applicable provisions and or supporting documentation regarding attainment or maintenance demonstrations required under the FCAA including assumptions in Reasonable Further Progress demonstrations, milestone demonstrations, proposed control measures identified as potentially having an enforceable near-term emissions reduction,

²⁷⁷ USEPA Letter of 12/19/2019, Comment 3.3.

²⁷⁸ 40 CFR 52.21(b)(23).

²⁷⁹ USEPA Letter of 12/19/2019, Comment 1.1.3.a.

²⁸⁰ USEPA Letter of 12/19/2019, Comment 1.1.3.a.

assumptions used in conformity determinations and assumptions used in emissions inventories.²⁸¹

1301(CCCC) – The definition of United States Environmental Protection Agency (USEPA) has been modified to include gender neutral terminology.

3. Proposed Amended Rule 1302 – *New Source Review Procedure*

1302(B) – Generally this section has been reformatted and renumbered for clarity and to make certain items, which were impliedly required by existing provisions, explicitly required.

1302(B)(1)(a)(i) – Specific wording requiring information on location, design, construction and operation of the Facility to be included in an application has been added at USEPA’s request. A provision requiring a determination of whether stack height exceeds Good Engineering Practice has been added to ensure that the analysis required under proposed subsection (C)(4) occurs if necessary. A cross reference to 40 CFR 51 Appendix W modeling protocols has been added at USEPA’s request.²⁸²

1302(B)(1)(a)(ii) – This provision has been reworded for clarity and duplicate provisions have been removed.

1302(B)(1)(a)(iii) – Added a provision requiring a PSD analysis if such is necessary.

1302(B)(1)(a)(iv) – Added a provision allowing the District to request additional information in an application if such becomes necessary.

1302(B)(1)(b) – This subsection has been substantially reworded for clarity. Provisions regarding former Rule 1310 have been removed.²⁸³

1302(B)(1)(c) – Provisions regarding Mandatory Federal Class I Area relating to visibility have been clarified to avoid confusion with the PSD requirements involving Federal Class I Area(s).²⁸⁴ Please see explanation regarding proposed Rule 1301(P), (EE), and (OO), above. In addition, Plantwide Applicability Provisions have been removed as unnecessary as such provisions were never used.

1302(B)(1)(d) – Added specific requirements necessary for PSD analysis. A cross reference to 40 CFR 51 Appendix W modeling protocols has been included at USEPA’s request.²⁸⁵

²⁸¹ Butte County APCD, Rule 432 – *Federal New Source Review*, 4/24/2014, Section 4.45,

²⁸² USEPA Letter of 12/19/2019, Comments 1.1.1.b., 1.1.3.a., and 3.4.

²⁸³ USEPA Letter of 12/19/2019, Comment 1.3.1.

²⁸⁴ USEPA Letter of 12/19/2019, Comments 1.3.1 and 2.1.

²⁸⁵ USEPA Letter of 12/19/2019, Comments 1.1.1.b. and 2.1.

1302(B)(1)(e) – A provision requiring confidential information to be clearly identified has been added to conform with subsection (D)(3)(c).

1302(B)(2)(a) – Transmission of the determination of completeness “immediately” has been changed to 10 working days so provide a definitive time limit for such transmission.

1302(B)(2)(a)(ii) – A provision is added to require a completeness determination with a PSD component to be transmitted to USEPA.

1302(B)(2)(a)(iii) – A provision requiring a notification and a copy of the application to USEPA and Federal Land Manager when an application contains visibility impacts for NSR or PSD or both has been moved from former Rule 1302(B)(2)(c).²⁸⁶ Once again please note that Federal Class I Area is the term with the larger number of potentially applicable areas thus this reference will cover both the PSD requirements and the NSR requirements related to Mandatory Federal Class I Area(s).²⁸⁷

1302(B)(2)(b) – A provision referencing the next step in the process has been added for consistency in formatting.

1302(B)(2)(c) – Provisions regarding the next step when no additional analysis is necessary have been modified for clarity.

Former 1302(B)(2)(c) – This provision has been moved.

1302(B)(3) – This section has been modified for clarity.

1302(B)(4) – Cross references to the Complex Source Evaluation fee has been added.

1302(C)(1) – The word “type” as referencing pollutants has been replaced with this phrase “specific pollutants” for clarity.²⁸⁸ The provisions referencing Rule 1310 have been removed.

1302(C)(2) – This entire subsection has been reorganized to more closely reflect the formatting and order of later provisions.

1302(C)(2)(c) – This area formerly contained a differentiation between applications proposing to use SERs and those which did not. As Proposed Rule 1304 calculation procedure has been modified to shift the use of SERs to the Net Emissions Increase Calculation, as opposed to their current use in applicability determinations, this distinction is no longer necessary. The provision has also

²⁸⁶ USEPA Letter of 12/19/2019, Comment 2.1.

²⁸⁷ Proposed Rules 1301(P) and (EE)

²⁸⁸ USEPA Letter of 12/19/2019, Comment 1.3.1.

been modified to clarify that SERs are not technically reductions in Potential Emissions but instead used as part of the Net Emissions Increase Calculation.

Please note that USEPA is also concerned about confusion between the term SER and Significant Emissions Rate, also abbreviated SER, as used in PSD regulations.²⁸⁹ Given the widespread familiarity by regulated industry within the District with the abbreviation of SER standing for Simultaneous Emissions Reduction and the low potential for use of the term Significant Emissions Rate the AVAQMD has opted to retain its current acronym. Any future use of the term in the PSD context will be spelled out completely.

1302(C)(2)(d) – Provisions regarding engineering analysis document, BACT requirements and reference to the next step in the analysis process has been provided.

Former 1302(C)(2)(b) – Procedural provisions regarding PSD have been relocated to subsection (D)(5)(b)(iv).

1302(C)(3) – This entire provision has been moved and modified from former subsection (C)(5). The notes below indicate changes from original wording in that subsection. This move streamlines the analysis process.

1302(C)(3)(a) – The word “type” as referencing pollutants has been replaced with this phrase “specific pollutants” for clarity.²⁹⁰

1302(C)(3)(b) – This provision contains changes to conform with USEPA regulations and guidance regarding implementation of FCAA §173(a)(1)(A) (42 U.S.C. §7503(a)(1)(A)).²⁹¹ The current wording was heavily influenced by a USEPA comment letter of 3/10/1995.²⁹² Minor wording changes to better reflect proposed language changes in Rule 1304 and Rule 1305 have also been provided.

1302(C)(3)(b)(ii) - Please note that the term “Offsets” in this subsection primarily refers to ERCs. However, pursuant to proposed Rule 1305(C)(2) SERs may be used directly as offsetting emissions reductions instead of being used to reduce Net Emissions Increases under proposed Rule 1304(B)(2).²⁹³

²⁸⁹ USEPA Email, L. Yannayon to K. Nowak, *Re: Notices in 1302*, 8/4/2020 (USEPA Email of 8/4/2020), Attached File 1302 DD4 2020 13 Jul + EPA

²⁹⁰ USEPA Letter of 12/19/2019, Comment 1.3.1.

²⁹¹ 40 CFR 51.165(a)(3)(ii)(C)(1-2); USEPA Memo, J. Seitz, Director Office of Air Quality Planning and Standards to D. Howekamp, Director Region IX, Air and Toxics Division, *Response to Request for Guidance on Use of Pre-1990 ERC's and Adjusting for RACT at Time of Use*, 8/26/1994.

²⁹² USEPA Letter, M. Haber to C. Fryxell, 3/10/1995, MDAQMD *Final Staff Report Regulation XIII – New Source Review 3/25/1996*, Appendix C Pages C-4 ¶2 and C-5 ¶4.

²⁹³ USEPA Letter of 12/19/2019, Comment 1.2.2.a.5.

1302(C)(3)(b)(iii) – 1310 cross references have been removed due to the proposed deletion of Rule 1310.²⁹⁴

1302(C)(3)(b)(iv) and (v) – Use of defined terms allows simplification of requirements.

Former provisions of Rule 1302(C)(4) have been removed as unnecessary due to the deletion of Rule 1310.²⁹⁵

1302(C)(4) – Stack height analysis provisions and requirements²⁹⁶ are proposed to be added pursuant to USEPA’s request. While there are currently no stacks in the District that are subject to this provision it is provided to meet a mandatory regulatory element. Please note that the applicable regulations require full 30-day notice and comment for these provisions and therefore a cross reference to proposed subsection (C)(7)(a)(i) is provided.²⁹⁷ Use of defined terms in proposed Rule 1301 eliminates need for federal regulatory cross references.²⁹⁸

1302(C)(5) – Revised to match formatting of other provisions and to correct cross references. Language added pursuant to USEPA request excluding this provision from the SIP.

Former 1302(C)(5) – Provisions moved to subsection (C)(3).

1302(C)(6) – Provisions added regarding PSD analysis and cross reference to Rule 1700.²⁹⁹ Provisions designed to match formatting of previous sections.

1302(C)(7) – This entire subsection has been extensively reworked to create four levels of notice: Major NSR Notice, Toxic NSR Notice, Minor NSR Notice and Permit Issuance Notice. Language has been standardized across various subsections. The specific subsections themselves are also reorganized to reflect the order of the analysis performed earlier in subsection (C).

1302(C)(7)(b) - Major NSR Notice is required in the following situations: If offsets are necessary pursuant to Rule 1303(B), If the stack height analysis from Rule 1302(C)(4) has been performed, If Rule 1700 PSD requirements apply, or the action involves the issuance, renewal or significant modification of a Federal Operating Permit. The proposed language adds the stack height analysis requirement and clarifies that only Federal Operating Permit issuance, renewal or significant modifications require this level of notice. A generalized reference to subsection (D) is provided, as opposed to a more specific reference, as that

²⁹⁴ USEPA Letter of 12/19/2019, Comments 1.3.1. and 3.3.

²⁹⁵ USEPA Letter of 12/19/2019, Comment 1.3.1.

²⁹⁶ 40 CFR 51.164 and 51.118.

²⁹⁷ USEPA Letter of 12/19/2019, Comment 1.1.3.a.

²⁹⁸ Proposed Rule 1301(U), (CC), (II), (UU) and (YYY).

²⁹⁹ USEPA Letter of 12/19/2019, Comment 1.3.1.

subsection provides specific requirements for distinct situations which may apply to multiple notice levels.³⁰⁰

1302(C)(7)(c) – Toxic NSR Notice applies when there is notice required pursuant to the provisions of Rule 1401. The provision is designed such that the notice can be either performed separately or included in the normal noticing procedure. Language has been added at the request of USEPA to exclude this subsection from the SIP.³⁰¹

1302(C)(7)(d) – Minor NSR Notice has been added. The threshold levels are expressed as numbers for ease of use. A “backstop” provision set at 80% of any applicable nonattainment Major Facility threshold is retained to cover the unlikely situation involving the District being designated nonattainment for any additional pollutants.³⁰² Justification for these thresholds may be found in Section VI. D. above.

The Hazardous Air Pollutant thresholds match those found in the Title V, Federal Operating Permit Program.³⁰³ The addition of emissions increases exceeding the Federal Significance Level for Regulated Air Pollutants to this level of notice will ensure that Minor NSR Notice will occur in cases where a Facility may not be required to do anything under the PSD provisions of Rule 1700 but is none the less Significant as defined in 40 CFR 52.21(b)(23). Please note, however, that any nonattainment pollutant increase larger than the significance level within the AVAQMD will automatically be larger than the thresholds found in Rule 1303(B) and thus require Major NSR Notice.

1302(C)(7)(e) – Permit Issuance Notice occurs when none of the other notice provisions apply. Please note that this notice will include publication on the District’s website on the District’s website with available access to the underlying analysis documents.³⁰⁴

1302(D)(1)(b) – A slight terminology change has been provided. “Denial” is used to reference a negative final outcome for a permitting action. “Disapproval,” is used to reference the preliminary action taken by the District when a denial is ultimately contemplated. The preliminary determination technically constitutes both the engineering evaluation and a draft permit language.³⁰⁵

1302(D)(1)(c) – Provisions regarding combining the NSR preliminary decision with a PSD document and/or a Title V Permit action have been added to allow such documents to be performed concurrently if the applicant so wishes.

³⁰⁰ USEPA Letter of 12/19/2019, Comments 1.1.2.b., 1.1.3.a., and 1.3.1.

³⁰¹ USEPA Letter of 12/19/2019, Comment 1.3.3.

³⁰² USEPA Letter of 12/19/2019, Comment 1.1.2.b.

³⁰³ Regulation XXX – Title V Permits.

³⁰⁴ Proposed Rule 1302(D)(3)(iii).

³⁰⁵ Proposed Rule 1302(D)(1); AVAQMD Webpage, Permitting Public Notices, <https://avaqmd.ca.gov/public-notices-advisories>.

1302(D)(2)(a) – Provisions regarding providing the application to the Federal Land Manager have been deleted as duplicative as such requirement is already provided in proposed subsection (B)(2) along with inclusion in the list of entities requiring notice in proposed subsection (D)(3)(a)(i). Please also note the provisions regarding comments received, if any, from the Federal Land Manager in proposed subsection (D)(2)(d).

1302(D)(2)(b)(i) – To obtain enhanced NSR certification³⁰⁶, allowing Federal Operating Permit changes to be issued concurrently with NSR, the notice and comment period for USEPA must be 45 days. This provision was added to specify that time period.

1302(D)(2)(d) – While certain elements in this section are not technically required, which agencies are notified are coordinated and consolidated with the three main levels of notice for ease of use.³⁰⁷ In effect, this means that the Federal Land Manager will receive an extra notice in a few situations while CARB would receive such additional notice in others.

1302(D)(2)(e) – This section has been added pursuant to USEPA request to allow for additional review if and when Mobile, Area, Indirect or Interpollutant offsets are used.³⁰⁸ Please note limitations on use of Mobile, Area, and Indirect Offsets to those calculated by a SIP approved calculation rule as found in proposed Rule 1305(C)(3). Please also see the notation in proposed Rule 1305(C)(6) regarding the current viability of interpollutant offsets.

1302(D)(3) – This provision has been reorganized for clarity to differentiate between the recipients and publication requirements for particular types of notice and the contents of said notices. It has also been revised to coordinate with the threshold levels contained in proposed subsection (C)(7). Please note that “send” as used in this subsection may be accomplished by a variety of methods including but not limited to USPS and Email.

1302(D)(3)(a)(i)b. – Shifts Major NSR and Toxic NSR notice from newspaper publication to website publication³⁰⁹ pursuant to changes detailed in the USEPA public noticing regulations³¹⁰ and CARB guidance.³¹¹

1302(D)(3)(a)(i)c. – While partially duplicative of requirements in (D)(2)(a) this provision specifies the list of all entities to be notified under Major NSR for ease of use. Toxic NSR notice is included, despite the fact that certain entities on the list are not required to have such notice, to consolidate the number of notification

³⁰⁶ 40 CFR 70.7(d)(1)(v).

³⁰⁷ USEPA Letter of 12/19/2019, Comment 2.1.

³⁰⁸ USEPA Letter of 12/19/2019, Comment 1.3.1.

³⁰⁹ USEPA Letter of 12/19/2019, Comment 1.1.2.a.

³¹⁰ 81 FR 71613, 10/18/2016.

³¹¹ CARB, Advisory 299, *Air District New Source Review Rules Regarding Electronic Notice*, July 2018.

lists into three discreet types.³¹² A cross reference to the Clerk of the Board as the official “keeper” of the list of persons requesting notice has been removed as that task has been assigned to a variety of different personnel over time.

1302(D)(3)(a)(i)d. – Provision partially deleted to conform with provisions regarding electronic notification.³¹³

Former Rule 1302(D)(3)(a)(ii) – Provisions regarding contents of particular types of notice have been relocated to proposed subsection (D)(3)(b).

1302(D)(3)(a)(ii)b. – While Minor NSR Notice is currently provided via website without a specific rule reference a provision requiring such notice and that the notice be viewable for the entire duration of the comment period has been added.³¹⁴

1302(D)(3)(a)(iii) – A provision has been added regarding posting the final permit on the District’s website for those actions which do not require either Major NSR Notice or Minor NSR Notice.

1302(D)(3)(b) – The provisions regarding the contents of each type of notice have been separated into their own subsection.

1302(D)(3)(b)(i) – A provision requiring comment procedures to be set forth in Major NSR Notice has been added along with a specific 30-day comment period, and a cross reference to the District Hearing Board review provisions. In addition, a specific notation regarding the ability to request a public hearing has been delineated for permit actions when stack height exceeds Good Engineering Practices; the degree of increment consumption for PSD; Federal Operating Permit issuance, renewal or Significant Modifications; and visibility impacts on a Federal Class I Area.³¹⁵ Each content item has been separated for ease of use, checklist fashion.

1302(D)(3)(b)(ii) – A provision requiring a specific 30-day notice and comment period has been added to Minor NSR Notice along with a requirement to include an explanation of comment procedures.³¹⁶ Once again, each content item has been separated for ease of use.

1302(D)(3)(c) – Provisions in this section have been consolidated and reworked so as to not duplicate items already required to be included pursuant to the notice provisions.

³¹² Colloquially referred to as the “Big List” the “Small List” and “Website Only.”

³¹³ USEPA Letter of 12/19/2019, Comment 1.1.2.a.

³¹⁴ USEPA Letter of 12/19/2019, Comment 1.1.2.a.

³¹⁵ USEPA Letter of 12/19/2019, Comments 1.1.2.b., 1.1.3.a., and 2.1.

³¹⁶ USEPA Letter of 12/19/2019, Comments 1.1.2.a. and 1.1.2.b.

1302(D)(3)(d) – This subsection originally overlapped with former subsection (e). The two sections have been consolidated.

Former Rule 1302(D)(3)(d) – Provisions have been combined with subsection (D)(3)(d).

1302(D)(3)(e) – A specific provision regarding public hearing requests has been added.

1302(D)(3)(h) – A provision regarding availability of documents pursuant to the California Public Records Act has been added.

1302(D)(4)(b) – Wording has been revised slightly to clarify that the final action is the issuance of the permits not the approval of the NSR Document since the NSR Document contains not only the draft permits but also backup analysis and notice documentation.³¹⁷

1302(D)(4)(f) – A provision requiring NSR Documents to be available for 5 years has been added.³¹⁸ Please also note that current District records retention policy requires these records to be retained until a minimum of 5 years after ALL the permits for the related Facility have been canceled, expired, surrendered AND any ERCs banked from that Facility have been used. On a practical matter, Facility records tend to be kept indefinitely due to multiple requests from land use agencies and title companies regarding what may have been historically located at a particular site.

1302(D)(5)(a)(iv) – Provision reiterating proposed Rule 1305 requirement that offsets are to be obtained prior to commencement of construction is added.

1302(D)(5)(b) – While this section prohibiting the APCO from issuing permits in certain circumstances is in part duplicative with requirements in other sections it has been retained as a final review and cross-check to ensure that those requirements have been met.

1302(D)(5)(b)(ii) – Language regarding modifications to permits and other necessary activities required under proposed Rule 1309 and/or 1305 has been broadened to ensure that no required activities are inadvertently omitted.

1302(D)(6)(a) – Standardization of language and use of defined terms has been added throughout this subsection.

³¹⁷ USEPA Letter of 12/19/2019, Comment 3.3.

³¹⁸ AVAQMD Governing Board Policy 13-01 – Requests for Inspection and/or Copying Public Records, 3/19/2003. See also: MDAQMD Governing Board Policy 93-2 *Provision and Retention of Public Records*, 2/25/2019; MDAQMD Standard Practice 4-5, 12/10/2019 as MDAQMD provides services by contract for AVAQMD and thus the MDAQMD documents regarding retention control.

4. Proposed Amended Rule 1303 – *New Source Review Requirements*

1303(A)(1) and (2) – While these provisions are not proposed for modification it must be noted that these requirements are derived from H&S Code §40918(a)(1). Please also note that Rule 219(B)(4) allows the APCO to require a permit for any Emissions Unit if there is a requirement that needs to be fully enforceable. That provision includes any Federal, State or District requirement including those contained in this regulation.

1303(A)(3) – Language has been shifted to match formulation of (A)(1) and (A)(2). Provisions are clarified such that the BACT requirement specific in regards to all new or Modified Permit Units at a Major Facility. Also clarifies that BACT is triggered by Major Facility (greater than the 1303(B)(1) threshold) status not as a flat 25 tpy of a Nonattainment Air Pollutant.

1303(B)(1) – This provision remains unchanged as a Facility based threshold to avoid inadvertently creating a situation which might be construed as a “back-off.”³¹⁹ Please note that this requirement is a mandate which applies when there is any of the following: An existing (pre-modification) Major Facility, A New Facility with PE > threshold, and any Facility where the post-modification emissions > threshold amounts regardless of the specific situation triggering the emissions increase over the threshold. This means that even if there happens to be no specific physical change, such as modifying a permit limit, and the potential emissions are greater than the threshold then this provision will apply. Additionally, when this subsection is triggered the calculations pursuant to proposed 1304(B)(2) will need to be performed to determine the initial base quantity of offsets which are needed. In a few cases this will result in the initial emissions change calculation pursuant to proposed 1304(B)(1) resulting in an offset requirement being triggered but when the Net Emissions Increase calculation is performed pursuant to proposed 1304(B)(2) the amount of offsets will be 0 and the resultant emissions limitation as expressed on the permits will result in the Facility as permitted remaining a Minor Facility.

1303(B)(1) Table – Please note that the PM₁₀ offset threshold for the District is much less than not only the Federal Moderate Nonattainment PM₁₀ threshold but also the PSD threshold. For an explanation of the origin of this threshold please see Section VI. A. 6. above. Attainment pollutants have been removed from the table as it applies to only nonattainment pollutants. PM₁₀ remains on the table as the AVAQMD is State nonattainment for this pollutant.

1303(B)(3) – Additional language has been added indicating the timing for calculating the Offset burden and BACT when a minor Facility becomes Major due to an increase in a previous permit limitation that kept the Facility as a synthetic minor facility.³²⁰ Please also note that USEPA has indicated that while

³¹⁹ H&S Code §§42500 et seq. (SB 288 of 2003, Ch 467); FCAA §110(l), 42 U.S.C. §7410(l).

³²⁰ USEPA Letter of 12/19/2019, Comment 1.2.2.d.

the FCAA language requires LAER, California BACT is in effect equivalent to the Federal LAER requirement.³²¹

1303(B)(4) – Provision language has been clarified to avoid the use of the word “type” at USEPA’s request.³²²

5. Proposed Amended Rule 1304 – *New Source Review Emissions Calculations*

In general, Rule 1304 is being revised to include all necessary calculational provisions and Simultaneous Emissions Reductions (SER) provisions leaving offset related provisions in proposed Rule 1305.

1304(A)(1)(a)(ii) – Provision has been reworded to conform with shift in the position of SER use in the calculations. Original calculations used SERs in determining emissions change for both applicability and offset amount calculations. Revisions are proposed to shift SER use to only offset amount calculations.

1304(A)(1)(a)(iv) – Provision is added to provide a cross reference regarding calculation of terms used in proposed Rule 1305 so that all calculation methods will be contained in Rule 1304.

1304(B) – This section has been reorganized to create two distinct calculation methodologies, one relating to applicability determinations and the other relating to offset amount determinations.

1304(B)(1) – While the initial calculation of emissions change remains the same please note that the new provision regarding project emissions change only includes positive emissions changes excluding reductions caused by SERs. Provisions for calculating project level emissions changes are provided in proposed 1304(B)(1)(b). This will be used to determine the applicability of the provisions of proposed Rule 1303. SERs will be applied in the Net Emissions Increase calculations and be used to determine the base amount, if any, of offsetting emissions reductions needed.

1304(B)(2) – This provision, while similar to proposed Rule 1304(B)(1) includes a specific calculation for both new Facilities and projects. Net emissions increase calculations include reductions created by SERs.

1304(C) – Consolidates all SER related provisions into proposed Rule 1304. Provisions are primarily unchanged. The only exception that the use of potential to emit as historic actual emissions when such PTE was fully offset in a prior

³²¹ USEPA, Email of 2/28/2020 attachment titled 02-28-20 Initial EPA Response to MDAQMD Letter Dated January 28

³²² USEPA Letter of 12/19/2019, Comment 1.3.1.

permitting action is moved from its former location in Rule 1304(D)(2)(a)(iv) into proposed

1304(C)(2)(d). This provision has been moved from 1305(B)(2)(b)(i) and consolidated with former Rule 1304(E)(2)(a)(iv). This provision allows fully offset PTE to be used as HAE in certain specified instances. This subsection also specifies that the change must be an emissions decrease as well as providing that any unused or excess SERs may not be banked pursuant to Rule 1309. Please note that the only time this subsection may be used is when an SER is being created at an existing Major Facility. Please also note that SERs by definition must be created in the same permitting action in which they are used.

1304(C)(4) – These provisions are moved from former Rule 1305(B)(2) with only minor changes for consistency in formatting.

1304(C)(4)(c) – USEPA’s Comment 1.2.2.a.2.³²³ requested the removal of Shutdowns of unpermitted units to create SERs. Please see Section VI. E. 3. above for a complete explanation of the rationale for this change.

1304(C)(5) – This provision is modified to reflect the change in use of SERs to the Net Emissions Increase calculation or directly as offsets under the provisions of 1305(C)(2).

1304(D) – This subsection has been modified to match similar provisions elsewhere in proposed 1304.

1304(E) - These terms have all been adjusted to match their 1301 Definitions.³²⁴

1304(E)(1) – These provisions have been consolidated with the provisions of former Rule 1305(E)(2) and former Rule 1304(E)(1)(b) for clarity and to avoid duplication.

1304(E)(2) – The current calculation of PTE includes “banked emissions” but the calculation of HAE does not. To avoid miscounting, such banked emissions would either need to be included in both or excluded in both. The District has chosen to exclude such banked emissions from both calculations.

Former Rule 1304(E)(2)(a)(iv) - This provision is moved to proposed Rule 1304(C)(2)(d) as the only time it is used is in the context of SERs.

1304(D)(3) – This provision has been modified to refer to Emissions Units to conform with proposed Rule 1301. The provision including “banked emissions” has been removed as explained under proposed 1304(D)(2) above. Fugitive emissions have been added to conform with proposed Rule 1301 definitions and Rule 1302 procedural requirements. In addition, the provisions regarding

³²³ USEPA Letter of 12/19/2019

³²⁴ Proposed Rule 1301(KK), (HHH) and (JJJ).

“banked” ERCs have been removed as in order for them to be properly reflected in calculations they would also need to be included in Proposed Emissions which would not change the ultimate calculations one way or another.

6. Proposed Amended Rule 1305 – *New Source Review Offsets*

The primary changes to proposed Rule 1305 involve reformatting and moving the SER and calculation provisions to proposed Rule 1304.

1305(A)(1)(a) – Provisions have been revised to reflect the change in rule focus.

1305(B) – This former subsection (A)(2) has been renumbered to conform to standard formatting.

1305(B)(1) – This subsection has been modified to reflect the fact that offset ratios are not applied until proposed Rule 1305(B)(3) and (4).

1305(B)(2) – This subsection has been reorganized to give each potential offsetting situation its own subset. Please note that unlike under Federal provisions any time a Facility becomes a Major Facility, regardless of the reason or method, offsets are required to a greater or lesser degree under the AVAQMD rules. Please also note that a Major Modification to a Minor Facility will, by mathematical operation result in that Minor Facility becoming Major and thus offsets will apply. Due to the restructuring of proposed Rule 1304 upon occasion a Minor Facility will modify and become Major (acquiring BACT on everything new or modified under proposed 1303(A)(3)) but due to the application of SERs end up with an offset amount of 0 and have a PTE as modified of less than the Major Facility threshold and therefore revert to Minor Facility status.

1305(C) – This provision has been renumbered with minor changes. Requirements that ERCs be Real, Surplus, Permanent, Quantifiable and Enforceable have been added as a backstop to Rule 1304 and 1309 provisions.

Former Rule 1305(B)(1)(b) has been removed as no longer necessary as the provisions for SERs have been moved into proposed 1304.

1305(C)(2) – This section is retained in a truncated form. While SERs will now mostly be used in conjunction with determination of Net Emissions Increase under proposed 1304(B)(2) there may be an occasion where a Facility may wish to used SERs directly as offsetting emissions reductions. Once again, the proposed language reiterates that any excess SERs cannot be banked pursuant to Rule 1309.

Former Rule 1305(B)(2)(a) provisions have been moved to proposed rule 1304(C).

1305(C)(3) – This provision combines former Rule 1305(B)(3)(a-c) into one section to cover all Mobile, Area, and Indirect source offsets as the main

provisions involved were identical. A provision is added pursuant to USEPA's request regarding any calculations for these types of offsets be performed pursuant to a SIP approved calculation rule.³²⁵ Such calculation rules would be placed in Regulation XIV – *Mobile Source Offsets* when adopted.

1305(C)(4) – The provisions in this subsection have been reorganized and the cross references to 1310 have been removed.³²⁶

1305(C)(5) – The provisions in this subsection have also been reorganized and the 1310 cross references have been removed.

1305(C)(6) – The 1310 cross references have been removed from this subsection. Due to a recent court decision³²⁷ the validity of these offsets is now in question. Thus, the MDAQMD is choosing to leave this section unchanged despite USEPA's Comment 1.2.2.e. regarding additional protocols necessary to make a case-by-case determination of an interpollutant offset ratio until such time as the issue is fully resolved.

1305(D) Table – This table has been revised to remove attainment pollutants leaving only nonattainment pollutants and their precursors. A conforming language change from ROC to VOC has also been made.

Former 1305(D) has been removed. This provision only applied to attainment pollutants and is now covered by the provisions of Rule 1700.³²⁸

Former 1305(E) has been removed as all term calculations are now contained in proposed Rule 1304(D)

7. Proposed Amended Rule 1306 – *New Source Review for Electric Energy Generating Facilities*

The primary changes to this rule are to conform citations to reflect changes in other rules. In addition, language has been added to (B)(2)(a) referencing “as in existence” date pursuant to USEPA standard request for citations to state law and regulation.

8. Proposed Amended Rule 1309 – *Emission Reduction Credit Banking*

The primary changes to this rule are to update cross references and to conform provisions to standardized format.

1309(A)(2) – This provision has been slightly modified to reflect the fact that proposed Rule 1305 covers the use of offsets while proposed Rule 1304 covers

³²⁵ USEPA Letter of 12/19/2019, Comment 1.3.1.

³²⁶ USEPA Letter of 12/19/2019, Comment 1.3.1.

³²⁷ *Sierra Club et al. vs. USEPA*, 985 F.3d 1055 (D.C. Cir., 1/29/2021).

³²⁸ This provision was originally added presumably to provide conformance with provisions of 40 CFR 51.165(f)(4)(iii), (k), (m)(1)(iii) and (s)(2)(iv)(a) as well as 40 CFR 52.21(k).

the base calculations. Proposed rule 1309 is primarily procedural in nature covering the transactions involving placing and removing ERCs in the ERC Registry.

1309(A)(3) – A double negative language formulation has been removed.

1309(B)(1)(b) – While this subsection remains substantively unchanged it must be noted that references to “expired” and “expiration dates” primarily are references to ERCs generated from mobile emissions reductions.

1309(B)(1)(d) – While this provision remains unchanged it must be noted that even though ERCs which have been banked retain their value regardless of changes in underlying laws such ERCs when used would be required to be “adjusted” pursuant to proposed Rule 1305(D) specifically the RACT upon use requirement in subsection (D)(4). As underlying prohibitory rule changes are often driven by shifts in RACT values such ERCs could very easily be substantially discounted when used.

1309(B)(1)(e) – Provisions requiring that emissions reductions be Real, Surplus, Permanent, Quantifiable and Enforceable prior to be placing in the ERC Registry have been added for additional enforceability. A cross reference to Regulation XXX has been removed as all Title V Facilities not only have a Title V permit but also carry state level permits. A cross reference to Rule 1305 has been shifted to reference the entire regulation as offsetting emissions reductions are governed by multiple provisions in multiple rules.

1309(B)(2)(b) – Language has been shifted to avoid used of the word “type” pursuant to USEPA preference.³²⁹

1309(C)(1)(d) – Language has been revised to reflect the fact that technically all permits are issued under Regulation II regardless of the amount of analysis required under other District Rules.

1309(C)(1)(f) – Provisions regarding confidentiality of information have been conformed to similar provisions in proposed Rule 1302(D)(3)(c)(iii).

1309(C)(5) – Notice provisions have been reworded slightly to conform with similar notice language in proposed Rule 1302(D)(3).

1309(D)(3) – This subsection has been reworked as a backstop provision to proposed Rule 1304 to ensure that ERCs are properly granted.

1309(D)(3)(c) – This provision removes the ability for generation of ERCs from the shutdown of unpermitted emissions units as unenforceable conforming to provisions in proposed Rule 1304(C)(4)(c). This provision also contains the ability to enforce emissions reductions by contract. Such contracts generally

³²⁹ USEPA Letter of 12/19/2019, Comment 1.3.1.

would be only used rarely for unusual situations such as parking lot/access road paving, pile management or other items where a permit is not really effective. In such cases the contract and its conditions are referenced on the permit for a related Permit Unit as an additional safeguard.

1309(G) – This section considers the granting of ERCs to be a “permit decision” and thus appealable pursuant to H&S Code §42302.1. A provision has been added to clarify this.

9. Rescission of Rule 1310 – *Federal Major Facilities and Federal Major Modifications*

Please see explanation for removal of this rule in subsection VI. A. 4. above.

10. Proposed Amended Rule 1401 – *New Source Review for Toxic Air Contaminants*

Most changes to this rule are to conform citations to reflect changes in other rules and for internal consistency.

1401(A)(2) – This provision has been added to indicate that the rule is not intended and will not be submitted as a SIP revision.

1401(B)(1)(a)(i) – The term Permit Unit has been changed to Emissions Unit in this subsection to conform with changes to proposed Rule 1300.

11. Proposed Amended Regulation XVII – *Prevention of Significant Deterioration (PSD)*

Rules 1701, 1702, 1703, 1704, 1706, 1710 and the Appendix are proposed for deletion. They are to be replaced with proposed Rule 1700 which adopts the the provisions of 40 CFR 52.21 by reference. There are a few terminology changes made to avoid confusion with other District Rules however, this change should allow the AVAQMD to receive PSD delegation if and when it is desired.

H. SIP HISTORY AND ANALYSIS

The history NSR and PSD rules applicable within the AVAQMD’s jurisdiction is rather complex.

[Insert Rule/SIP History here.]

Given the above the AVAQMD is requesting that CARB submit the current amendments as a SIP revision and request the following specific actions:

- [Insert specific actions requested here]

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Appendix “A”
Regulation XIII – *New Source Review*
Regulation XVII – *Prevention of Significant Deterioration and*
Rule 1401 – *New Source Review for Toxic Air Contaminants*
Iterated Versions

The iterated version (**redline**) is provided so that the changes to an existing rule may be easily found. The manner of differentiating text is as follows:

1. Underlined text identifies new or revised language.
2. ~~Lined out text~~ identifies language which is being deleted.
3. Normal text identifies the current language of the rule which will remain unchanged by the adoption of the proposed amendments.
4. *[Bracketed italicized text]* is explanatory material that is not part of the proposed language. It is removed once the proposed amendments are adopted.
5. **Highlighted text** indicates items, such as adoption dates, which will be determined by date of Governing Board action or items which require a more permanent citation when such becomes available.

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[Insert Rule 1300 here]

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[Insert Rule 1301 here]

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[Insert Rule 1302 here]

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[Insert Rule 1303 here]

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[Insert Rule 1304 here.]

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[Insert Rule 1305 here]

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[Insert Rule 1309 here]

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[Insert Rule 1310 here]

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[Insert Rule 1401 Here]

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[Insert Rule 1706 here]

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[Insert Rule 1710 here]

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[Insert Reg. XVII Appendix here]

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Appendix “B”
Public Notice Documents

1. Proof of Publication – Antelope Valley Press MM/DD/YYYY

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Appendix “C”
Public Comments and Responses

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Appendix “D”
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