In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 8, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(589) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(589) The following plan was submitted on July 27, 2020 by the Governor's designee.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(*1*) California Air Resources Board, ''70 ppb Ozone SIP Submittal,'' excluding section III, ''VMT Offset Demonstration,'' release date: May 22, 2020.

(*2*) [Reserved]

(B) [Reserved]

[FR Doc. 2022–20586 Filed 9–28–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0480; FRL–9873–02–R9]

Air Plan Disapproval; California; Antelope Valley Air Quality Management District and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to disapprove revisions to the Antelope Valley Air Quality Management District (AVAQMD) and the Mojave Desert Air Quality Management District (MDAQMD) portions of the California State Implementation Plan (SIP) concerning rules submitted to address section 185 of the Clean Air Act (CAA or the Act) with respect to the 1-hour ozone standard.

DATES: This rule is effective on October 31, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0480. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4129 or by email at *sherman.donnique@epa.gov.*

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

Table of Contents

I. Proposed Action

On June 17, 2022 (87 FR 36433), the EPA proposed to disapprove the following rules adopted by the AVAQMD and MDAQMD (collectively, ''the Districts'') that were submitted for incorporation into the California SIP.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
AVAQMD	315	Federal Clean Air Act Section 185 Penalty	10/18/11	12/14/11
MDAQMD	315	Federal Clean Air Act Section 185 Penalty	10/24/11	12/14/11

We proposed to disapprove these rules because some rule provisions do not satisfy the requirements of section 110 and part D of the Act. These provisions include the following:

1. AVAQMD Rule 315 refers to the term ''Major Facility'' as defined in ''District Rule 1301.'' The current SIP-approved Rule 1301 for AVAQMD does not contain a definition of ''Major Facility.''

2. The Districts did not provide a justification for the method chosen to calculate alternate baseline emissions for facilities with emissions that are irregular, cyclical, or otherwise vary significantly, which differs from the method EPA has previously considered to be generally approvable as explained in the EPA's guidance.

3. The rules establish an area-wide equivalency ''Tracking Account.'' This system requires the cooperation and coordination of three districts: AVAQMD, MDAQMD, and the South Coast Air Quality Management District (SCAQMD). Each rule requires the respective Air Pollution Control Officer (APCO) to request an accounting from the other Districts, but there is no requirement for the APCO to provide their accounting to the other Districts. The rules assume accounting across the three Districts with the same system in place. SCAQMD does not have a rule that contains the same provisions. As a result, the area-wide accounting system is not enforceable.

4. The formula for calculating the penalty fee needs correcting to properly reflect the inflation adjustment based on the Consumer Price index.

Our proposed action and technical support document (TSD) contain more information on the basis for this disapproval and on our evaluation of the submitted rules.

II. Public Comments and the EPA's Responses

The EPA's proposed action provided a 30-day public comment period. During the comment period we received one comment from the MDAQMD, and one comment from the AVAQMD.

Comment 1: AVAQMD commented that, ''the current SIP version of the AVAQMD New Source Review (NSR) Regulations are those approved for SCAQMD on December 4, 1996. Of those SIP approved rules, Rule 1302 contains applicable definitions including the term 'Major Polluting Facility.' The AVAQMD and its predecessor agencies has amended and caused to be submitted to USEPA these rules on several occasions with a shift of the definitions to Rule 1301 and a slight change in terminology to 'Major Facility.' To avoid confusion on the part of regulated facilities, cross references need to be to the current rule book rules. Thus, the deficiency as noted in the TSD in Section 4.b.1. is not only unavoidable but a direct result of USEPA's inaction on prior submissions. As USEPA indicates in the TSD this deficiency will be resolved whenever USEPA acts upon the most current NSR submission.''

Response 1: As indicated in our TSD associated with our proposed action, we anticipate that approval of the current locally adopted versions of AVAQMD Rule 1301 and AVAQMD Rule 1303 into the SIP will resolve this deficiency. The AVAQMD's comment does not appear to challenge our proposed action and therefore does not impact our proposed disapproval.

Comment 2: The Districts both commented that it would be helpful if the EPA could ''indicate a potential timeline for action on [their other section 185 penalty] rules.'' They further mentioned that this would enable the Districts ''to either amend Rule 315 quickly so that it can be evaluated with the other FCAA 185 penalty rules or to wait for EPA to expeditiously identify deficiencies in those other rules'' so they can adjust Rule 315 appropriately.

Response 2: The CAA outlines the EPA's review process, deadlines, and timeframes. CAA section 110(k)(2) states that once a submitted plan or plan revision is determined complete, the EPA shall act on the submission within 12 months of that determination. We understand that the Districts would like to streamline their rulemaking efforts. We will make every effort to keep the Districts informed of the status of submitted SIP revisions in consideration of local district rulemaking timelines.

Comment 3: The Districts both commented that: ''While the Southeast Desert Modified AQMD was found to have failed to attain the old 1-hour O_3 standard based on 2005–2007 data in 2011 it must be noted that the area subsequently attained the standard as early as the 2009–2011 data set. In fact, USEPA noted that such attainment was possible based on the preliminary review of the 2010–2012 data set in its Notice of Proposed Rulemaking Determination of Attainment of the 1-Hour Ozone National Ambient Air Quality Standard in the Southeast Desert Nonattainment Area in California on August 25, 2014. This attainment determination was finalized on April 15, 2015. Due to the timing of the Rule adoption, USEPA's actions and the subsequent attainment designation the [AVAQMD/MDAQMD] asserts that the provisions of Rule 315 have not been triggered and are unlikely to be triggered in the future as the 1-hour O_3 standard has been fully rescinded.''

Response 3: The EPA does not agree with the Districts' statement that the provisions of Rule 315 have not been triggered and are unlikely to be triggered in the future. To the extent that this comment is based on the requirement to have a section 185 program for a revoked national ambient air quality standard (NAAQS), the Districts are incorrect. To the extent that it is based on the text of the rules themselves, the EPA does not find support in the text of the rules for the proposition that the rules require a trigger to become effective.

As the commenters note, the EPA found that the Southeast Desert Modified Air Quality Management Area (AQMA) failed to attain the now-revoked 1-hour ozone standard based on 2005–2007 data in 2011.[1] In that action, we explained that although the EPA revoked the 1-hour ozone standard, to comply with anti-backsliding requirements of the Act, 8-hour ozone nonattainment areas remain subject to certain requirements based on their 1-hour ozone classification. Initially, in our rules to address the transition from the 1-hour to the 8-hour ozone standard, the EPA did not include the section 185 fee program among the measures retained as 1-hour ozone anti-backsliding requirements.[2] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that the EPA should not have excluded these requirements (and certain others not relevant here) from its anti-backsliding requirements.[3] As a result, the section 185 major source fee program is maintained as an anti-backsliding measure for the 1-hour ozone NAAQS in areas that were classified as Severe or Extreme nonattainment for the 1-hour standard at the time of revocation.

In our 2011 notice finding that the Southeast Desert Modified AQMA failed to attain the 1-hour ozone NAAQS, the EPA explained, citing the *South Coast* decision, that the rationale for the finding was that ''after revocation of the one-hour ozone standard, the EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements that have been

[1] 76 FR 82133 (December 30, 2011).

[2] 69 FR 23951 (April 30, 2004).

[3] *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) reh'g denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review) (referred to herein as the *South Coast* case).

specifically retained'' and that our finding was ''in keeping with this responsibility with respect to one-hour anti-backsliding . . . section 185 fee programs.'' [4] Specifically, we wrote that a consequence of the finding of failure to attain by the attainment date was ''to give effect to the section 185 fee requirements to the extent they are not already in effect'' within the nonattainment areas covered by the finding, including the Southeast Desert Modified AQMA.[5] Accordingly, the districts within the Southeast Desert Modified AQMA are required to comply with the section 185 fee program requirements.

The Districts note that ''the area subsequently attained the standard as early as the 2009–2011 data set'' and that ''USEPA noted that such attainment was possible based on the preliminary review of the 2010–2012 data set,'' citing our August 25, 2014 proposal [6] and April 15, 2015 final [7] rules titled ''Determination of Attainment of the 1-Hour Ozone National Ambient Air Quality Standard in the Southeast Desert Nonattainment Area in California.'' The EPA's determination that the area attained the standard based on the 2009–2011 data set is a type of action commonly known as a Clean Data Determination (CDD). The CDD does not impact the Districts' section 185 obligations. Section 185 of the CAA states that this obligation applies to areas that fail to attain an ozone NAAQS by the relevant attainment date. Specifically, section 185 states, ''[e]ach implementation plan revision required under section 7511a(d) and (e) of this title (relating to the attainment plan for Severe and Extreme ozone nonattainment areas) shall provide that, if the area to which such plan revision applies has failed to attain the national primary ambient air quality standard for ozone *by the applicable attainment date*'' major stationary sources in the nonattainment area must pay section 185 fees (emphasis added). As discussed above, the EPA has determined that the Southeast Desert Modified AQMA failed to attain the 1-hour ozone standard by the November 15, 2007, applicable attainment date.[8]

Furthermore, section 185 of the Act does not provide relief from fees in the event the EPA subsequently issues a CDD. Section 185 specifically provides that such fees must be paid ''until the area is redesignated as an attainment area for ozone.'' A Clean Data Determination is not the same as a redesignation to attainment.[9] While the statute specifies that redesignation to attainment will remove the requirement for an area to implement the section 185 fee requirement, a CDD does not.[10] Accordingly, our 2015 Determination of Attainment for the area did not turn off the section 185 obligation, and that requirement remains active in the Southeast Desert Modified AQMA.

To the extent that the Districts' assertion that ''the provisions of Rule 315 have not been triggered and are unlikely to be triggered in the future'' is based on the text of the rules themselves, the EPA does not see a basis for this claim. If the Districts' comments are meant to suggest that AVAQMD Rule 315 and MDAQMD Rule 315 have not become effective or require an event to trigger them in the future, the EPA does not agree. Rule 315 does not contain any provisions that indicate that a triggering event is required for them to become effective. Rule 315 ''is applicable to any Facility within the District Portion of the AQMA which emits or has the potential to emit nitrogen oxides (NO_X) or Volatile Organic Compounds (VOC) in an amount sufficient to make it a Major Facility'' and ''cease[s] to be applicable when the AQMA is designated as attaining the one-hour national ambient air quality standard for ozone.'' As discussed above, the area has not been redesignated as attaining the 1-hour ozone NAAQS. No exemption or other provision of the rule suggests that the rule is not applicable or that the rule must be ''triggered'' in any way. Accordingly, the EPA does not agree with this aspect of the Districts' comments.

The Districts' suggestions that the rules require a triggering event in order to become effective do not impact our proposed disapproval because the EPA is proposing to disapprove AVAQMD Rule 315 and MDAQMD Rule 315 on other grounds. The EPA notes that any rule that may be submitted to address the deficiencies identified in this rulemaking should not include a future event to trigger applicability because the attainment date has already passed and the area has failed to attain.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action and the associated TSD. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is finalizing a disapproval of submitted AVAQMD Rule 315 and MDAQMD Rule 315. As a result, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline. In addition to the sanctions, CAA section 110(c) provides that the EPA must promulgate a federal implementation plan (FIP) addressing any disapproved elements of the SIP within two years after the effective date of the disapproval unless we approve subsequent SIP revisions that correct the rule deficiencies. As a result of the EPA's January 5, 2010 determination that California had failed to submit the required CAA section 185 fee programs for the 1-hour ozone NAAQS for certain nonattainment areas (75 FR 232), the EPA is already subject to a statutory deadline to promulgate a FIP for this purpose. Note that the submitted rules were adopted by AVAQMD and MDAQMD, and the EPA's final disapproval does not prevent the local agencies from enforcing them.

IV. Statutory and Executive Order Reviews

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

[4] 76 FR 82133, 82135.

[5] Id. at 82136.

[6] 79 FR 50574.

[7] 80 FR 20166.

[8] 76 FR 82133.

[9] In order to be redesignated to attainment, the Act requires that: (1) an area attain the relevant NAAQS, (2) the area have a fully approved attainment plan, (3) the Administrator determine that improvement in air quality is due to permanent and enforceable reductions in emissions, (4) the area have a fully approved maintenance plan, and (5) the State meet all applicable requirements for the area under section 110 and Part D of the Act. CAA § 107(d)(2)(E).

[10] See 40 CFR 51.918, specifying that a determination that an ozone nonattainment area has attained a NAAQS suspends certain requirements, not including the section 185 fee obligation, and that a subsequent redesignation to attainment would terminate these requirements. See also Memorandum from John D. Seitz, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' May 10, 1995 (''Determinations made by EPA that an area has attained the NAAQS . . . is not equivalent to the redesignation of the area to attainment.''); 40 CFR 51.1105, describing the ''redesignation substitute'' procedure that allows areas that were designated nonattainment for a revoked NAAQS at the time of revocation to turn off the anti-backsliding requirements (a petition for review regarding this provision is currently pending before the Court of Appeals for the District of Columbia in *Sierra Club* v. *EPA,* Case #20–1121).

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this SIP disapproval does not in-and-of itself create any new information collection burdens, but simply disapproves certain state requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This SIP disapproval does not in-and-of itself create any new requirements but simply disapproves certain state requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action disapproves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this SIP disapproval does not in-and-of itself create any new regulations, but simply disapproves certain state requirements for inclusion in the SIP.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

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

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 21, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.237 is amended by adding paragraph (c) to read as follows:

§ 52.237 Part D disapproval.

* * * * *

(c) The following Clean Air Act section 185 fee rules, and the section 185 program plan element for the specified NAAQS, are disapproved because they do not meet the requirements of Part D of the Clean Air Act.

(1) Antelope Valley Air Quality Management District.

(i) Rule 315, ''Federal Clean Air Act Section 185 Penalty,'' amended on October 18, 2011, and submitted on December 14, 2011, for the 1979 1-hour ozone NAAQS.

(ii) [Reserved]

(2) Mojave Desert Air Quality Management District.

(i) Rule 315, ''Federal Clean Air Act Section 185 Penalty,'' amended on October 24, 2011, and submitted on December 14, 2011, for the 1979 1-hour ozone NAAQS.

(ii) [Reserved]

[FR Doc. 2022–20858 Filed 9–28–22; 8:45 am]

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