pound net weight of watermelons per truckload.

Prior to its recommendation to increase the assessment rate, the Board considered three alternative options. First, the Board considered maintaining the current assessment rate of six cents per hundredweight. However, with no increase to the assessment rate, the Board determined many research and promotion programs would be reduced or eliminated to balance the budget. Consequently, the alternative of maintaining the current assessment rate was rejected.

The second alternative considered by the Board was a two-cent increase to the assessment rate, raising the assessment rate from six cents per hundredweight to eight cents per hundredweight. This would allow the Board to operate with a balanced budget beginning in 2025, in addition to increasing investment in Board promotions. However, the Board decided against supporting a two-cent increase as inflationary pressure may further limit operations of the Board in coming years.

The third alternative considered by the Board was a tiered increase of the assessment rate with a two-cent increase effective on January 1, 2025, for a rate of eight cents per hundredweight, and an additional one-cent increase effective on January 1, 2026, for a rate of nine cents per hundredweight. This option to spread the assessment increase over a prolonged period was considered, but the Board ultimately decided against this alternative to avoid confusion with concurrent annual assessment adjustments.

This proposed rulemaking would also include administrative changes to § 1210.515(b) of the Plan to correct non-substantive and typographical errors. These administrative changes would have no impact on the assessment rate.

This proposed rulemaking would not impose additional recordkeeping requirements on first handlers, producers, or importers of watermelons. Producers of fewer than 10 acres of watermelon and importers of less than 150,000 pounds of watermelon annually are exempt. There are no Federal rules that duplicate, overlap, or conflict with this proposed rulemaking. In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], the information collection and recordkeeping requirements that are imposed by the Plan have been approved previously under OMB control number 0581–0093. This proposed rulemaking would not result in a change to the information collection and recordkeeping requirements previously approved.

AMS performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Plan on small entities, and we invite comments concerning potential effects of this amendment on small businesses.

AMS has determined this proposed rulemaking is consistent with the Act and would effectuate its purposes.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rulemaking by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 1210 as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

■ 1. The authority citation for part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

■ 2. Amend § 1210.515 by revising paragraphs (a) and (b) to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of four and a half cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food, and an assessment of four and a half cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of nine cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.11.30 and 0807.11.40 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service and Border Protection (Customs) will collect assessments on such watermelons at the time of entry and will forward such assessment as per the agreement between Customs and USDA. Any importer or agent who is exempt from payment of assessments may submit to the Board adequate proof of the volume handled by such importer for the exemption to be granted.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–14937 Filed 7–8–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0228; FRL–11830–01–R9]

Federal Implementation Plan for Nonattainment New Source Review Program; Mojave Desert Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to promulgate a Federal Implementation Plan (FIP) under the Clean Air Act (CAA) that consists of Nonattainment New Source Review (NNSR) rules for areas within the jurisdiction of the Mojave Desert Air Quality Management District (MDAQMD or ''District'') in which air pollutant concentrations are above specific National Ambient Air Quality Standards (NAAQS). The NNSR rules would apply to construction of new major stationary sources and major modifications at existing major stationary sources of air pollution. The proposed FIP, if finalized, would be implemented by the EPA, unless and until it is replaced by an EPA-approved state implementation plan (SIP).

DATES: Comments must be received on or before August 23, 2024. The EPA will hold a virtual public hearing on July 24, 2024.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R09–OAR–2024–0228 via the Federal eRulemaking Portal at *https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending

comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

You may register for the hearing at *https://www.epa.gov/caa-permitting/public-hearing-federal-implementation-plan-nonattainment-new-source-review-program-0.* Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

FOR FURTHER INFORMATION CONTACT: Tanya Abrahamian, Air and Radiation Division, Rules Office (AIR–3–2), Environmental Protection Agency, Region IX, telephone number: (213) 244–1849; email address: *Abrahamian.Tanya@epa.gov.*

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

Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0228 at *https://www.regulations.gov* (our preferred method). Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

B. Participation in Virtual Public Hearing

The EPA will begin pre-registering speakers for the hearing no later than 1 business day after publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please visit *https://www.epa.gov/caa-permitting/public-hearing-federal-implementation-plan-nonattainment-new-source-review-program-0* for online registration. The last day to pre-register to speak at the hearing will be July 22, 2024. The EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www.epa.gov/caa-permitting/public-hearing-federal-implementation-plan-nonattainment-new-source-review-program-0.*

The virtual public hearing will be held via teleconference on July 24, 2024. The virtual public hearing will convene at 4 p.m. Pacific Time (PT) and will conclude at 7 p.m. PT. The EPA may close the session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. For information or questions about the public hearing, please contact Tanya Abrahamian, per the **FOR FURTHER INFORMATION CONTACT** section of this document. The EPA will announce further details at *https://www.epa.gov/caa-permitting/public-hearing-federal-implementation-plan-nonattainment-new-source-review-program-0.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *Abrahamian.Tanya@epa.gov.* The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations, but the EPA will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/caa-permitting/public-hearing-federal-implementation-plan-nonattainment-new-source-review-program-0.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact *Abrahamian.Tanya@epa.gov,* per the **FOR FURTHER INFORMATION CONTACT** section of this document, to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by July 22, 2024. The EPA may not be able to arrange accommodations without advance notice.

Policy on Children's Health

In 2021, EPA updated its *Policy on Children's Health* to reflect that ''children's environmental health refers to the effect of environmental exposure during early life: from conception, infancy, early childhood and through adolescence until 21 years of age.'' In addition, the policy applies to ''effects of early life exposures [that] may also arise in adulthood or in later generations.'' In this action, the EPA is proposing to implement our Federal regulations in the nonattainment areas under the MDAQMD. In so far as there is an impact from this action, it will be positive since the deficiencies in the District's program it is meant to rectify would likely result in increased emissions as compared to this FIP and our Federal NNSR regulations.

The information presented in this preamble is organized as follows:

Table of Contents

I. Purpose of This Action

The EPA is proposing an NNSR FIP that will apply to construction of new major sources and major modifications at existing major sources that are located within areas that are designated as not in attainment with specific NAAQS. These are the San Bernardino County portion of the West Mojave Desert ozone nonattainment area and the San Bernardino County and Trona Planning Area PM_{10} nonattainment areas.[1]

[1] See 40 CFR 81.305. The PM_{10} nonattainment areas together consist of all of the MDAQMD portion of San Bernardino County; they are the Trona Planning Area and the portion of San

II. Background

The following sections describe the basis for the EPA's determination that an NNSR FIP is necessary for the portion of the West Mojave Desert ozone nonattainment area and the San Bernardino County and Trona Planning Area PM_{10} nonattainment areas that are located within the jurisdiction of the MDAQMD. The MDAQMD is currently the agency responsible for issuing permits required under the CAA to construct new and modified major stationary sources of air pollution in San Bernardino County and the Palo Verde Valley portion of Riverside County.[2]

A. Standards, Designations, and Classifications

The CAA requires the EPA to set NAAQS for ''criteria pollutants.'' States are then responsible for developing state implementation plans (SIPs) that contain regulatory measures to prevent air pollution from exceeding those standards, or to bring areas that do not meet those standards into attainment.

Currently, ozone and related photochemical oxidants and particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, or ''PM_{10},'' as well as five other major pollutants, are listed as criteria pollutants.[3] On July 1, 1987, the EPA promulgated two primary standards for PM_{10}.[4] Effective December 18, 2006, the EPA revoked the annual PM_{10} NAAQS but retained the 24-hour PM_{10} NAAQS.[5] On March 27, 2008, the EPA revised the NAAQS for ozone to strengthen the 8-hour primary and secondary standards (''2008 ozone NAAQS'').[6] On March 6, 2015, the EPA issued an implementation rule for the 2008 ozone NAAQS (''2008 Ozone SIP Requirements Rule'').[7] That action amended state planning requirements applicable to ozone nonattainment areas and provided specific deadlines for additional SIP submittals.

As part of their SIPs, states designated as nonattainment for a NAAQS criteria pollutant are required to develop and submit to the EPA for approval NNSR preconstruction permit programs that meet the requirements in CAA sections 172, 173, and 182, as applicable. These permits limit increased emissions from construction of new and modified major stationary sources locating in, or located in, areas designated nonattainment for the NAAQS. The statutory and regulatory NNSR requirements for the 2008 ozone NAAQS are found in CAA sections 172(c)(5), 173, 182, and 40 CFR 51.160 through 51.165. The 2008 Ozone NAAQS SIP Requirements Rule required states to submit an NNSR plan or plan revision no later than three years from the effective date of the nonattainment designation for the 2008 ozone NAAQS, or by July 20, 2015.[8] The EPA later revised the ozone NAAQS in 2015 (''2015 ozone NAAQS''), and thereafter[9] promulgated a similar requirement for NNSR preconstruction permitting for the 2015 ozone NAAQS.[10]

Within the MDAQMD, the ''Los Angeles-San Bernardino Counties (West Mojave Desert), CA'' area (''West Mojave Desert'') is currently designated to be in Severe nonattainment for the 2008 and 2015 ozone NAAQS.[11] The Trona Planning Area and the remainder of San Bernardino County that is within the MDAQMD's jurisdiction are each designated as Moderate nonattainment areas for the 1987 PM_{10} NAAQS.[12] The MDAQMD's jurisdiction is designated Attainment/Unclassifiable for all other criteria pollutants.[13] Therefore, the designation of portions of the MDAQMD as Federal ozone and PM_{10} nonattainment areas triggered the requirement for the District to develop and submit an NNSR program to the EPA for approval into the California SIP.

B. Findings and Disapprovals

On February 3, 2017, the EPA found that the State of California had failed to submit a SIP revision for NNSR rules that apply to a Severe classification for the 2008 ozone NAAQS, as required under subpart 2 of part D of title 1 of the CAA and the 2008 Ozone SIP Requirements Rule.[14] Consistent with the CAA and the EPA regulations, the EPA's finding of failure to submit in February 2017 established deadlines for the imposition of sanctions for the affected ozone nonattainment area. The EPA's finding of failure to submit also triggered an obligation under CAA section 110(c) for the EPA to promulgate a Federal Implementation Plan (FIP) no later than two years from the finding of failure to submit a complete SIP (*i.e.,* by March 6, 2019).[15] Specifically, the finding stated that if the state did not make the required SIP submission and the EPA did not take final action to approve the submission within two years of the effective date of these findings, the EPA would be required to promulgate a FIP for the affected nonattainment area.[16]

The 2015 Ozone NAAQS Implementation Rule required the MDAQMD to submit an updated NNSR rule to the EPA by August 1, 2021, no later than three years from the effective date of its nonattainment designation.[17] On July 23, 2021, the California Air Resources Board submitted to the EPA the MDAQMD's revised NNSR rules for the 2015 ozone NAAQS, which the MDAQMD adopted in March 2021.[18] On June 30, 2023, the EPA finalized a limited approval and limited disapproval (''LA/LD action'') of the District's NNSR rules.[19] The EPA evaluated the SIP submission to determine its compliance with NNSR requirements for the 2008 and 2015 ozone NAAQS and the 1987 PM_{10} NAAQS due to the MDAQMD's nonattainment status for those three NAAQS. The EPA's rulemaking for the submitted rules explained that the EPA had determined that the submitted rules contained six deficiencies that did not fully satisfy the relevant requirements for preconstruction review and permitting in nonattainment areas under section 110 and part D of title I of the Act, which therefore prevented full approval.[20] As noted in that final action, this disapproval imposed an obligation for the EPA to promulgate a FIP pursuant to CAA section 110(c) within 24 months of the effective date of the action (*i.e.,* July 31, 2023, which would make the EPA's deadline to promulgate a FIP no later than July 31, 2025) unless the EPA approved a subsequent SIP revision that corrects the deficiencies. The 2023 final action also noted that the EPA had an existing obligation to promulgate a FIP for any new source review (NSR) SIP elements that the Agency had not taken final action to approve.[21] The EPA is proposing this FIP for the NNSR program in the MDAQMD to fulfill the EPA's statutory duty by the deadline established under

Bernardino County that excludes both the Trona Planning Area and the portion of San Bernardino County that is located in the South Coast Air Basin. A map of this area is available in the docket for this action.

[2] California Health and Safety Code section 41210(b).

[3] See 40 CFR part 50.

[4] 52 FR 24634 (July 1, 1987).

[5] 71 FR 61144 (October 17, 2006).

[6] 73 FR 16436 (March 27, 2008).

[7] 80 FR 12264 (March 6, 2015).

[8] 80 FR 12264 (March 6, 2015); 40 CFR 51.1114.

[9] 80 FR 65292 (October 26, 2015).

[10] 40 CFR 51.1314; 83 FR 62998 (December 6, 2018).

[11] 40 CFR 81.305.

[12] Id.

[13] Id.

[14] 82 FR 9158 (February 3, 2017).

[15] Id. at 9161. The effective date was March 6, 2019, because the 30-day period fell on a Sunday.

[16] Id.

[17] 83 FR 62998.

[18] 88 FR 42258 (June 30, 2023).

[19] Id.

[20] Id.

[21] Id. at 42268.

a consent decree in a lawsuit brought against the EPA to compel promulgation of a FIP arising from the finding of failure to submit.[22]

Accordingly, the EPA is proposing this FIP to address the deficiencies identified in the LA/LD action of MDAQMD Rules 1301, 1302, 1303, 1304, and 1305.[23] These rules contain essential components of the MDAQMD's amended NNSR program. Although the EPA is aware that the MDAQMD intends to submit revisions to its NNSR program that would address all but one of the deficiencies in the 2023 LA/LD action,[24] the EPA has not approved into the SIP any corrections that resolve the deficiencies identified in that rulemaking. Therefore, the EPA is proposing the FIP in this action to address the deficiencies identified in the June 30, 2023, LA/LD action.[25]

In that rulemaking, the EPA determined that the MDAQMD program did not satisfy the requirement that permit applicants obtain corresponding reductions in emissions to offset increased emissions from construction at stationary sources. The EPA observed that the calculation procedure used in the District's rules to determine the amount of offsets required in certain situations does not comply with CAA section 173(c)(1) nor the regulations at 40 CFR 51.165(a)(3)(ii)(J) and (a)(1)(vi)(E).[26] Under CAA section 173(c)(1), the SIP must contain provisions to ensure that ''the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction . . . in the actual emissions of such air pollutant. . . .'' [27] The EPA found the MDAQMD's Rule 1304 to be deficient because it allows offsets for each modification at a major source to be calculated as the difference between the pre- and post-modification allowable emissions (also referred to as ''potential to emit'' or PTE) of a pollutant as opposed to requiring offsets for these modifications based on the difference between pre-modification actual emissions and post-modification allowable emissions.[28] In other words, the MDAQMD's Rule 1304 applies an allowables-to-allowables test (also referred to as a PTE-to-PTE test) for calculating the quantity of ''simultaneous emission reductions'' (SERs) [29] for offsetting emissions increases from a ''Modified Major Facility.'' [30] Because SERs calculated using the post-modification PTE to pre-modification PTE test at a Modified Major Facility are calculated using the pre-modification PTE instead of the pre-modification Historic Actual Emissions (HAE) as the baseline, the EPA determined that the District's approach for calculating offsets does not meet minimum SIP requirements.[31] Using actual emissions as the pre-project baseline (as required by the EPA's regulations) would show a higher net emissions increase than a calculation that uses allowable (*i.e.,* potential) emissions as the pre-project baseline.[32] Consequently, calculating emissions decreases using potential emissions as the baseline allows reductions ''on paper'' that do not represent real emissions reductions. The EPA determined that this deficiency in the calculation procedures of Rule 1304 also results in deficiencies in Rules 1301, 1302, 1303, and 1305 because those rules contain cross-references to Rule 1304.[33]

The EPA also determined that the definitions for ''Major Modification'' and ''Modification (Modified)'' in Rule 1301(NN) and 1301(JJ), respectively, are deficient because they allow permit applicants to calculate a net emissions increase using allowable (*i.e.,* potential) emissions as the pre-project baseline, rather than actual emissions, as required by the EPA's NNSR regulations.[34] More specifically, Rule 1304(B)(2) allows SERs calculated and verified pursuant to the PTE-to-PTE test under Rule 1304(C)(2) to be subtracted from the total of all ''net emissions increases'' at any given facility. Due to the same deficiency identified in Rule 1304, the EPA determined that the MDAQMD's approach does not meet minimum SIP requirements because determining the amount of a net emissions increase (by calculating the difference between pre-project and post-project emissions) using actual emissions as the pre-project baseline (as required by the EPA's regulations) will show a higher net emissions increase than a calculation that uses allowable (*i.e.,* potential) emissions as the pre-project baseline.[35] The MDAQMD definitions of ''major modification'' and ''modification (modified)'' in Rules 1301(NN) and 1301(JJ), respectively, are therefore not in compliance with the Federal regulations in 40 CFR 51.165(a)(1)(v)(A)(*1*); the calculation procedures for determining offsets pursuant to 40 CFR 51.165(a)(3)(ii)(J); and the criteria for determining the emission decreases that are creditable as offsets pursuant to 40 CFR 51.165(a)(1)(vi)(E)(*1*).

Next, the District rules do not include a requirement in CAA section 182(c)(6) that applies to nonattainment areas classified as Serious and above. The CAA provides that increases of ozone precursor emissions (volatile organic compound (VOC) and oxides of nitrogen (NO_X)) [36] resulting from a modification ''shall not be considered de minimis for the purposes of determining (NNSR) applicability unless the increases in net emissions . . . from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years which includes the calendar year in which such increase occurred.'' [37] The EPA found the MDAQMD provisions to be deficient because they did not include this provision.[38]

In addition to the deficiencies described above, the EPA identified deficiencies stemming from the MDAQMD's use of incorrect or undefined words. First, MDAQMD Rule 1304(D)(2)(a)(i) uses the word ''proceeds'' where the word ''precedes'' should be used, changing the meaning

[22] *Center for Biological Diversity et al.,* v. *Regan,* No. 3:22–cv–03309–RS (N.D. Cal.). This consent decree is also available in the docket of this action.

[23] 88 FR 42258.

[24] Id.

[25] The EPA's review of any SIP submission submitted by the MDAQMD to address the deficiencies identified in the June 2023 final action will proceed as with any other SIP submission review.

[26] 88 FR 42258, 42261–6.

[27] Offsets represent real reductions in real pollutants. A source that is permitted to emit 100 tpy but actually emits 90 tpy must reduce its actual emissions to below 90 tpy for offset credit.

[28] 40 CFR 51.165(a)(3)(ii)(J).

[29] ''SER'' is the MDAQMD's term for offsets.

[30] 88 FR 42261–6. The MDAQMD's rules equate ''allowable emissions'' and PTE.

[31] Id. The MDAQMD Regulation XIII, Rule 1301(HH) defines Historic Actual Emissions (HAE) as ''the Actual Emissions of an existing Emissions Unit or combination of Emissions Units, including Fugitive Emissions directly related to the Emissions Unit(s), if the Facility belongs to one of the Facility categories as listed in 40 CFR 51.165(a)(1)(iv)(C), calculated in pounds per year and determined pursuant to the provisions of District Rule 1304(D)(2).''

[32] As the EPA wrote in the June 2023 limited approval and limited disapproval action, ''Allowable emissions are generally set higher than anticipated actual emissions to allow for normal fluctuations in emissions to occur without violating the permit conditions. The use of allowable emissions as the pre-project baseline means that the difference between pre-project and post-project emissions will be smaller than a calculation applying the EPA's requirement to use actual emissions as the pre-project baseline.''

[33] Id. at 42263.

[34] Id. at 42264–65.

[35] Id. at 42265.

[36] While CAA section 182(c)(6) refers only to VOC emissions, CAA section 182(f) extends to NO_X emissions all requirements related to VOC emissions unless the Administrator determines that there is a disbenefit to NO_X reductions.

[37] CAA section 182(c)(6).

[38] 88 FR 42266–67.

of the provision.[39] Second, the MDAQMD's rules allow the word ''contract,'' an undefined term, to act as a substitute for the word ''permit.''[40] The EPA found that where it is not clear that permit requirements must be met to obtain such a contract, regulated sources may not need to adhere to SIP requirements they would otherwise have to meet to obtain a permit.

Finally, MDAQMD Rule 1305 allows for interprecursor trading of ozone precursors, whereas the EPA's rules no longer allow interprecursor trading.[41] Except for the deficiencies regarding the missing applicability threshold provision and ozone interprecursor trading, which only apply to the emission of ozone precursors, the deficiencies identified in this section are relevant for both ozone and PM_{10} nonattainment in the MDAQMD-administered portion of San Bernardino County.

C. Scope of the EPA's Proposed FIP

The FIP proposed in this action would authorize the EPA to directly implement the NNSR program for construction of new major stationary sources and major modifications at existing stationary sources within (1) the San Bernardino County portion of the West Mojave Desert ozone nonattainment area for the 2008 and 2015 ozone NAAQS and (2) the portions of the San Bernardino County and Trona Planning Area PM_{10} nonattainment areas, all of which are within the MDAQMD's jurisdiction. The EPA would directly implement the NNSR program in these areas until such time as the EPA approves a SIP submission from the MDAQMD that fully resolves the deficiencies identified in the EPA's June 30, 2023, LA/LD action on the MDAQMD's NNSR program and identifies no new deficiencies.[42]

The proposed FIP requirements are designed to meet the statutory requirements for SIPs and NNSR programs in CAA sections 110(c)(1), 172(c)(5), 173, 182(c) and (d), 189(a)(1)(A) and (e), 301(a), and 302. The provisions of the FIP are also designed to meet the requirements for state plans in the EPA regulations at 40 CFR 51.165, 51.1114, and 51.1314.

The FIP addresses the deficiencies the EPA identified in the MDAQMD's NNSR program by incorporating requirements from 40 CFR part 51, appendix S (''appendix S''), which was developed by the EPA as a transitional program for areas lacking an EPA-approved NNSR program. The deficiencies in the MDAQMD's NNSR program that the EPA identified in the 2023 LA/LD action are broad and affect multiple aspects of the program.[43] For example, the MDAQMD's definition of what constitutes a modification could enable sources that should be subject to NNSR to avoid it, and the undefined term ''contract'' is potentially unenforceable. These deficiencies create issues at the outset as to whether a source is subject to NNSR. Because of these and the other deficiencies in the MDAQMD's NNSR program (*e.g.,* the offset calculation deficiencies), the EPA determined that it is most appropriate to propose a FIP that implements all of appendix S until the MDAQMD submits a fully approvable SIP.

The EPA has not, however, applied appendix S as a standalone FIP, so additional requirements are needed for this FIP rule. While appendix S and 40 CFR 51.165 have elements of a FIP that can be readily incorporated into rules applicable to specific jurisdictions, they do not include the application submission requirements and other requirements necessary to make the program administrable. Absent such specific administration requirements in the EPA's Federal NSR regulation, the EPA has looked to other resources to develop the content for this FIP, including the EPA regulations at 40 CFR part 49, which contain a Federal NNSR program for Indian Country.

The NNSR program only applies to pollutants for which an area is designated nonattainment; therefore, this proposed action would apply only in the areas within MDAQMD's jurisdiction that are designated nonattainment. Application of this FIP does not relieve source owners or operators or permit applicants from their obligation to comply with all applicable EPA-approved implementation plan requirements for sources within the jurisdiction of the MDAQMD. As discussed in section II.B of this document, the 2023 LA/LD action disapproved elements of the MDAQMD's NNSR program that the EPA identified as deficient; however, those disapproved elements remain in the SIP.[44] Upon finalization of this FIP, permit applicants would still be required to comply with the MDAQMD SIP and therefore must still submit permit applications to the MDAQMD as that SIP requires, among other requirements. Permit applicants would therefore need to obtain two permits—one permit from the EPA under this FIP and one permit from the MDAQMD under the rules in the SIP. Applicants would not be allowed to begin actual construction until both the EPA and MDAQMD issue the respective permits under this FIP and the SIP; therefore, applicants would be advised to submit applications to each agency simultaneously to ensure parallel processing.

Where permit approval criteria between the MDAQMD's SIP and this FIP conflict—for example, the procedures to determine the quantity of offsets at a major modification, a deficiency in the MDAQMD's NNSR program—permit applicants would need to demonstrate compliance with the requirements of this FIP, since this FIP fills the gaps in the MDAQMD's NNSR program. The EPA does not anticipate that permit requirements in the EPA-issued FIP would be more stringent than the requirements in the SIP except for those that address the deficiencies the EPA identified in the 2023 LA/LD action. To the extent that there are any differences in the required application materials under the FIP versus the SIP, the applicant would need to comply with both requirements when submitting its application.

The EPA would directly implement and enforce the FIP. Enforcement authority is provided under CAA section 113(a), which authorizes the EPA to impose penalties including requiring compliance with the applicable implementation plan within a specified amount of time, payment of a civil penalties or enforcing through a civil judicial action.

III. Proposed FIP Requirements

The proposed FIP would apply to construction of new major sources and major modifications at existing major sources located within ozone and PM_{10} nonattainment areas in the MDAQMD's jurisdiction. The proposed FIP includes the following sections: Plan Overview, Definitions, Applicability, Permit Approval Criteria, Public Participation Requirements, Final Permit Issuance and Administrative and Judicial Review, and Administration and Delegation of the Major NSR Plan for the MDAQMD. The following sections

[39] Id.

[40] Id. at 42262.

[41] Id. at 42266. On January 29, 2021, the D.C. Circuit Court of Appeals issued a decision in *Sierra Club* v. *U.S. EPA,* which vacated an EPA regulation that allowed the use of reductions of an ozone precursor to offset increases in a different ozone precursor, *i.e.,* ''interprecursor trading.'' *Sierra Club* v. *EPA,* 21 F.4th 815, 819–823 (D.C. Cir. 2021). On July 19, 2021, the EPA removed the ozone interprecursor trading provisions in 40 CFR 51.165(a)(11). 86 FR 37918 (July 19, 2021).

[42] 88 FR 42258.

[43] Id.

[44] 88 FR 42258, 42268.

summarize the requirements of the proposed FIP. As explained in section II.C. of this document, the content of this proposed FIP is generally based on appendix S, which is the EPA's transitional program for areas that lack an approved program. This FIP also includes, however, elements of the EPA's Federal Major New Source Review Program for Nonattainment Areas in Indian Country at 40 CFR part 49.

A. Plan Overview

The plan overview paragraph (paragraph (a)) establishes the purpose of the FIP and where it applies, and it sets forth the general provisions that apply to the FIP. The purpose of the FIP is to establish preconstruction permitting requirements for new major stationary sources and major modifications at existing major stationary sources located in the MDAQMD portion of the Los Angeles-San Bernardino County (West Mojave Desert) ozone nonattainment area and the San Bernardino County and Trona Planning Area PM_{10} nonattainment areas. The FIP would apply until such time as MDAQMD submits a revised SIP that resolves all the deficiencies identified by the EPA and the EPA fully approves the MDAQMD's NNSR SIP.

If the EPA fully approves the MDAQMD's NNSR SIP, the EPA will transition its authority to the MDAQMD. This may include suspending the issuance of Federal NNSR permit decisions under this FIP for permit actions that are pending upon the effective date of the EPA's approval of the MDAQMD's NNSR SIP. The EPA may retain jurisdiction over Federal NNSR permit applications for which the EPA has issued a proposed permit decision, but for which final agency action or the exhaustion of all administrative and judicial appeals processes (including any associated remand actions), or both, have not yet been concluded or completed by the effective date of such approval. The EPA would address these details of the transition in the approval of the MDAQMD's NNSR SIP submission.

If the EPA fully approves the MDAQMD's NNSR SIP, permits issued under this FIP will remain in effect and will be enforceable by the EPA. The EPA will continue to conduct the general administration of such permits and will retain authority to process and issue any and all subsequent NNSR permit actions relating to such permits. The EPA may transition this authority to the MDAQMD following a request from MDAQMD and after the EPA determines under CAA section 110(a)(2)(E)(i) that the MDAQMD has the necessary funding, personnel and authority and that the plan approval includes the authority for the MDAQMD to conduct general administration of such permits, the necessary authority to process and issue subsequent permit actions relating to such permits and the authority to enforce such permits. This detail of the transition would also be addressed in the plan approval action.

B. Definitions

Unless otherwise stated, the definitions in appendix S apply. Paragraph (b) contains additional definitions of the terms ''Actual emissions,'' ''Enforceable as a practical matter,'' ''Environmental Appeals Board,'' ''Nonattainment pollutant,'' ''Reviewing authority,'' and ''Significant.'' The EPA included definitions for these terms to ensure that they are adequate and appropriate for implementing this specific FIP.

The definition of ''Actual emissions'' is similar to the definition in paragraph II.A.13 of appendix S but does not provide for a reviewing authority to presume that source-specific allowable emissions are equivalent to the source's actual emissions, since that provision is not relevant for the implementation of this FIP.

The EPA included the definition of ''Enforceable as a practical matter'' because the term is used, but is not defined, in appendix S.

The EPA included the definition of ''Environmental Appeals Board'' because it is a necessary term for describing the permit appeals process.

The EPA included the definition of ''Nonattainment pollutant'' to simplify the regulatory language in the FIP and ensure that this FIP would apply to sources emitting nonattainment pollutants in the MDAQMD.

The EPA included the definition of ''Reviewing authority'' to specify that the EPA administers this FIP unless the EPA has delegated its authority to the MDAQMD as specified in paragraph (g)(2) of § 52.285.

The EPA modified the definition of ''Significant'' as that term is defined in appendix S to also include applicability threshold in CAA section 182(c)(6), which applies in nonattainment areas classified Serious and above for ozone. Section 182(c)(6) says that a change to the method of operation of a stationary source or a physical change to the source itself cannot be considered de minimis for purposes of determining the applicability of NNSR permitting requirements unless the increase in net emissions of NO_X or VOC from the source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years, which includes the calendar year in which the increase occurred.

C. Applicability

This applicability paragraph (paragraph (c)) is titled ''Does the plan apply to me?'' This paragraph provides the criteria that a source is required to use for determining whether the FIP applies to the source. It states that the FIP applies to a source that will propose to construct a new major source (as defined in paragraph II.A.4 of appendix S) or a major modification at the permit applicant's existing major source (as defined in paragraph II.A.5 of appendix S). This paragraph also provides requirements concerning any source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980.

D. Permit Approval Criteria

The permit approval criteria paragraph (paragraph (d)) provides the criteria the EPA will use in reviewing a permitting application and in granting or denying an NNSR permit. The criteria include the requirements specified in CAA section 173 and appendix S. With specific regard to one deficiency that the EPA identified in MDAQMD's NNSR rules as explained in the June 30, 2023, final rule, CAA section 173(c)(1) and 40 CFR 51.165 requires that state permit programs must ensure that emission increases from new or modified major stationary sources are offset by real reductions in actual emissions. These requirements are included in paragraph (d)(2) of § 52.285.

This paragraph also adopts by reference requirements from 40 CFR part 51, appendix S. Major new sources or major modifications locating in areas designated as nonattainment for a pollutant for which the source or modification would be major may be allowed to construct only if the conditions set forth in appendix S are met. These requirements are incorporated in section (d) of the proposed FIP.

In addition to these requirements, the proposed paragraph also requires an applicant to submit certain information in its permit application to ensure that the information necessary to process the permit application is provided to the reviewing authority, consistent with the CAA requirements. This paragraph also requires the submission of information necessary for determining the potential effects on federally listed endangered or

threatened species or designated critical habitats, and on historic properties. Additionally, the paragraph provides instructions for submitting a permit application to the EPA. Finally, the proposed paragraph specifies that the reviewing authority shall require monitoring, recordkeeping, and reporting conditions in a permit as necessary to facilitate compliance with the terms of a permit and make them enforceable as a practical matter.

E. Public Participation Requirements

The public participation paragraph (paragraph (e)) identifies the information for a project that must be made publicly available. It also describes how the public will be notified of a draft permit and how the public can comment and request a public hearing. These requirements are necessary to ensure that the FIP meets the requirements of the CAA and the EPA regulations, which require reviewing authorities to afford adequate opportunities for public participation in agency decision-making.

F. Final Permit Issuance and Administrative and Judicial Review

Paragraph (f) specifies when the final permit will be effective and addresses opportunities for administrative and judicial review of permitting decisions. Generally, a final permit becomes effective 30 days after service of the final permit decision, unless (1) a later effective date is specified in the permit; (2) review of the final permit is requested according to the appeal procedures in 40 CFR 124.19;[45] or (3) no comments requested a change in the draft permit or a denial of the permit, in which case the reviewing authority may make the permit effective immediately upon issuance.

This paragraph also provides general requirements concerning the administrative record for the final permit decision, explaining the required contents of the administrative record, which is the basis for permit decisions by the reviewing authority. This paragraph also includes the requirements for permit reopenings and rescissions. Permit reopenings must provide for public notice and an opportunity for public comment, except for reopenings that do not increase emission limitations. Permit rescissions, which the reviewing authority may grant at the source's request if an application for rescission shows that the provisions of this paragraph would not apply to the source or modification, require public notice.

G. Administration and Delegation of the Major NSR Plan for the MDAQMD

Paragraph (g) specifies that the EPA is the reviewing authority for the FIP. It also provides a process for delegating the administration of the FIP to the MDAQMD, publication of notice of a delegation agreement, and revision or revocation of a delegation agreement.

H. SIP Replacement of All or Any Part of This FIP

The MDAQMD may submit revisions to its SIP at any time to address deficiencies identified by the EPA and the CAA requirements that are covered by the FIP. If the EPA approves such a SIP submittal, the approved MDAQMD rules would apply rather than the FIP, in whole or in part, as appropriate. SIP replacement of part of this FIP would still require the permit applicant to comply with the portion of the FIP that has not been replaced by the approved SIP. For the EPA to remove all FIP provisions, the MDAQMD would need to address of the deficiencies identified in the EPA's June 2023 final rulemaking action.[46] As mentioned earlier in this document, the EPA is aware that the MDAQMD intends to submit revised rules to partially correct the deficiencies the EPA identified in the June 2023 final rulemaking action, which, if approved, could replace the corresponding requirements of this FIP. Until such time, permit applicants would be required, upon finalization of this FIP action, to comply with the FIP as well as the MDAQMD's SIP-approved NNSR regulation. As explained in section II.C of this document, this means permit applicants would need to submit permit application materials to both the EPA for review under the FIP and, separately, to the MDAQMD.

I. Severability

This FIP is a multifaceted regulatory instrument that addresses different NNSR requirements under the CAA, as detailed in the specific sections of this document that focus on the discrete contents of this FIP. The EPA intends the portions of this FIP to be severable from other portions, though the EPA took the approach of including all the parts in one rulemaking rather than promulgating multiple rules.

For example, the permit approval criteria state that the reviewing authority shall not approve a permit application unless it meets criteria required under the CAA and appendix S. Those criteria include:

—the lowest achievable emission rate requirement;
—the certification that all existing major sources owned or operated in California are in compliance or on a schedule for compliance with all applicable emission limitations and standards under the CAA;
—the requirement to obtain offsets from existing sources in the area of the proposed source such that there will be reasonable progress toward attainment of the applicable NAAQS;
—the requirement to demonstrate that the offsets will provide a net air quality benefit in the affected area as required under part 51, appendix S, paragraph IV.A, Condition 4;
—the requirement to demonstrate that emissions reductions otherwise required by the CAA are not credited for purposes of satisfying the offset requirements of the FIP; and
—the analysis of alternative sites, sizes, production processes, and environmental control techniques to demonstrate that the benefits of the source or modification significantly outweigh the environmental and social costs imposed as a result of the source's location, construction, or modification.

Each of these requirements is independent and may be severable. Should the MDAQMD submit a SIP revision that corrects some, but not all, of the deficiencies identified in our June 30, 2023 rulemaking, the permit approval criteria for this FIP could be limited to the remaining deficiencies the EPA identified.[47] As described in section II.C of this document, permit applicants would still need to comply with any portions of the FIP that remain after the EPA approves the MDAQMD's revised rules in the SIP. Likewise, if a court invalidates any one of these elements of the FIP, the EPA intends the remainder of this action to remain effective, as the EPA finds each portion of it to be appropriate even if one or more parts of it have been set aside.

IV. Environmental Justice Considerations

This section summarizes environmental justice data for areas that would be impacted by this proposed action for informational and transparency purposes only. The EPA notes that the following discussion about environmental justice data is not a basis for this action and is distinct

[45] 40 CFR 124.19 establishes the appeal process for petitioning for review of a permit decision, including how to initiate an appeal, the deadline for filing a petition, and what to include in a petition.

[46] 88 FR 42258.

[47] 88 FR 42264–42266; See also 87 FR 72434, 72438 (November 25, 2022).

from the statutory obligations discussed in this proposal under the CAA. The CAA and applicable implementing regulations neither prohibit nor require an evaluation of environmental justice and consideration of environmental justice did not inform the regulatory requirements included in this proposal. The EPA identified environmental burdens and susceptible populations in communities with potential environmental justice concerns in the MDAQMD portion of the West Mojave Desert ozone nonattainment area and the San Bernardino County and Trona Planning Area PM_{10} nonattainment areas using a screening-level analysis for ozone and PM_{10} in the West Mojave Desert using the EPA's environmental justice screening and mapping tool (''EJSCREEN'').[48] The EJSCREEN information and related supporting documentation for this action are available in the public docket for this action.

The area in which the FIP would apply is a large portion of San Bernardino County, California (all but the southwest portion of the County). The EPA used EJSCREEN to look at existing major stationary sources located in the 15 cities in the portion of San Bernardino County that is in the MDAQMD's jurisdiction.[49] EJSCREEN shows that the population of San Bernardino County, California is 2,192,817, although a significant portion of the population lives in the area that is outside the jurisdiction of the MDAQMD and therefore outside of the geographic area that would be subject to this proposed FIP. The 15 cities (and their populations as provided in EJSCREEN) are Daggett (553), Oro Grande (4,899), Ivanpah (1), Hinkley (436), Barstow (27,835), Victorville (94,380), Trona (1,546), Adelanto (19,567), Kelso (1), Newberry Springs (488), Needles (7,844), Lucerne Valley (2,778), Edwards Air Force Base (6,579), Hesperia (60,788), and China Lake (32,020).

The EJSCREEN results show 13 of the 15 cities (except for the cities of Needles and Oro Grande) have percentiles above the general 80th percentile nationally [50] for the ozone EJ index or the supplemental ozone EJ index. None of the cities exceeds the general 80th percentile nationally for the PM EJ index or the supplemental PM EJ index.

The EPA also looked at the EJSCREEN's socioeconomic indicators called ''demographic index,'' ''limited English-speaking households,'' and ''less than high school education.'' For the ''demographic index,'' the results show that 7 or the 15 cities have percentiles that exceed the general 80th percentile nationally. These cities are Daggett, Ivanpah, Barstow, Victorville, Adelanto, Kelso, and Hesperia. The ''demographic index'' is generally the average of an area's percent minority and percent low-income population.

For the ''limited English-speaking households'' socioeconomic indicator, the results show that 4 of the 15 cities exceed the general 80th percentile nationally; these cities are Ivanpah, Hinkley, Kelso, and Lucerne Valley. For the ''less than high school education'' socioeconomic indicator, the results show that 8 of the 15 cities exceeded the general 80th percentile nationally; these cities are Hinkley, Adelanto, Lucerne Valley, Ivanpah, Victorville, Kelso, and Hesperia.

The EPA intends to address any potential EJ-related concerns that may be associated with the socioeconomic indicators for the ''demographic index,'' ''limited English-speaking households,'' and ''less than high school education'' through outreach and public participation for the permits issued under the FIP. This work includes announcing the opportunity to comment on each permit and making proposed permit actions available to the public during the public comment period with an opportunity for a public hearing. Given that the implementation and public participation methods are similar to those in the District's currently applicable permit program, the EPA does not anticipate any change to these requirements resulting from the finalization of this FIP as proposed.

V. Proposed Action and Request for Public Comment

In accordance with CAA sections 110(c) and 301(a),[51] the EPA is proposing to promulgate a FIP for the NNSR program for the MDAQMD portion of the West Mojave Desert ozone nonattainment area and the San Bernardino County and Trona Planning Area PM_{10} nonattainment areas. The FIP would apply only to construction of new major stationary sources and major modifications at existing major stationary source in these nonattainment areas. The proposed FIP implements statutory requirements in CAA sections 110(c)(1), 172(c)(5), 173, 179(b), 182(c) and (d), 189(a)(1)(A) and (e), 301(a), and 302.

The FIP will be directly implemented and enforced by the EPA. The proposed FIP authorizes the EPA to delegate implementation of the FIP to the MDAQMD if the District requests such delegation. The FIP would apply until the MDAQMD revises its SIP to address deficiencies identified by the EPA and the EPA fully approves the MDAQMD's NNSR SIP.

The EPA will accept comments from the public on this proposed FIP for the next 45 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule.

VI. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was, therefore, not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) because the proposed rule implements existing requirements under the CAA and 40

[48] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at: *https://www.epa.gov/ejscreen/what-ejscreen.* The EPA used EJSCREEN to obtain environmental and demographic indicators. These indicators are included in EJSCREEN reports that are available in the rulemaking docket for this action. However, EJSCREEN is not a detailed risk analysis. It is a screening tool that examines some of the relevant issues related to environmental justice, and there is uncertainty in the data included.

[49] Information about the existing major stationary sources is available on the MDAQMD's website. See *https://www.mdaqmd.ca.gov/.*

[50] The EPA has provided that, if any of the EJ indices for the areas under consideration are at or above the 80th percentile nationally, then further review may be appropriate. However, it is important to note that an area with any EJ indices at or above the 80th percentile nationally does not necessarily mean that the area is an ''EJ Community.'' As stated previously, EJSCREEN provides screening-level indicators, not a determination of the existence or absence of EJ concerns. See: *https://www.epa.gov/ejscreen/how-interpret-ejscreen-data.*

[51] Under CAA section 301(a), the EPA is authorized to prescribe such regulations as are necessary to carry out its functions under this chapter.

CFR 51.160 through 51.165. The Office of Management and Budget (OMB) has previously approved the information collection activities in the existing prevention of significant deterioration (PSD) and NNSR regulations under OMB control number 2060–0003. The burden associated with obtaining an NNSR permit for a major stationary source undergoing a major modification is already accounted for under the approved information collection requests. Thus, the EPA is not conducting an information collection request for this action.

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 is unlikely to impact small entities because the permitting requirements implemented through this action are applicable only to construction or modification of major stationary sources of air pollution. In the MDAQMD, major sources are those that emit, or have the potential to emit 25 tons per year or more of NO_X, SO_X, or VOC; or 15 tons per year or more of PM_{10}. To the extent that any small entities would own or operate sources capable of emitting this much air pollution, the requirements of this action apply only to construction of new major sources, or major modifications to existing major sources, located in the portions of the MDAQMD that are subject to the requirements of this action. The EPA does not have information to suggest that there currently are a substantial number of major stationary sources located in the MDAQMD that are owned or operated by small entities. The Agency also does not have any information on future modifications that any such existing major sources may engage in after finalization of this FIP. Further, the Agency does not have information that suggests one or more small entities will seek to construct a new major stationary source in the MDAQMD.

Even if the Federal permitting requirements established in this FIP could be applicable to one or more small entities, these requirements would not have significant economic impact on such a small entity. Furthermore, any impact would not affect a substantial number of small entities. This proposed FIP ensures that such small entities and other sources subject to the FIP requirements meet CAA requirements to which these sources should have already been subject. Upon finalization of this action, sources applying for a permit will be required to submit application materials to the EPA in compliance with the proposed FIP. These sources are already subject to NNSR requirements under the District's SIP, including, the requirements to submit applications, to obtain offsets, and to install pollution control technology that satisfies Federal standards. Consequently, the incremental impact associated with application of the specific requirements of the NNSR regulations for certain sources emitting nonattainment criteria pollutants or its precursors is expected to be de minimis, primarily pertaining to the amount of offsets needed.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate of $100 million or more, as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

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: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because this proposed rule would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that the tribe has jurisdiction, and it 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

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866. The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because it implements specific standards established by Congress in statutes.

However, EPA's *Policy on Children's Health* applies to this action. Information on how the Policy was applied is available under ''Children's Environmental Health'' in the Supplementary Information section of this preamble.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing our Nation's Commitment to Environmental Justice for All

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns. While the EPA can identify the existing major sources in the nonattainment areas that would be impacted by this action, the EPA cannot quantify the number or types of sources that will undertake major modifications in the future. Additionally, the EPA cannot know whether new major sources will locate in the nonattainment area and what emissions these sources may have. The impacts of the proposal on are likely to vary greatly depending on the source category, number and location of facilities, and the pollutants and potential controls addressed. Therefore, while the EPA cannot quantify the precise baseline conditions and impacts, to the extent that this action will have impacts, it will not result in disproportionate and adverse effects on communities with EJ concerns as compared with baseline human health and environmental conditions.

Upon finalization of this action, the EPA would replace the MDAQMD in implementation of the District's NNSR program through the FIP. Therefore, the EPA does not anticipate that this action,

upon finalization, will result in any negative impacts to human health and the environment negative impacts. If this action has any impact on human health or the environment it will be beneficial in so far as the FIP action will address deficiencies associated with the calculation of emission offsets in the NNSR program. As explained in section II of this NPRM, this FIP is being promulgated to address several deficiencies with the MDAQMD's NNSR program. While the EPA has not analyzed the health impacts nor the emissions impacts from these deficiencies, the deficient provisions are less stringent than the Federal NNSR requirements that the EPA will be applying if this proposed FIP is finalized. Therefore, in so far as the EPA can qualitatively identify impacts to human health and the environment, the EPA expects this action, if finalized, would ensure the protections provided by the CAA and EPA's implementing regulations will be fully realized.

List of Subjects in 40 CFR Part 52

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

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

Michael Regan,

Administrator.

For the reasons stated in the preamble, part 52 of title 40 of the Code of Federal Regulations is proposed to be 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 52.285 is added to read as follows:

§ 52.285 Review of new sources and modifications—Mojave Desert Air Quality Management District.

(a) *Plan overview*—(1) *What is the purpose of the Federal Implementation Plan (FIP or ''plan'')?* The FIP has the following purposes:

(i) It establishes the Federal preconstruction permitting requirements for new major sources and major modifications located in nonattainment areas within the Mojave Desert Air Quality Management District (MDAQMD or ''District'') that are major for a nonattainment pollutant.

(ii) The plan serves as the Federal nonattainment new source review (NNSR or ''nonattainment major NSR'') plan for the area described in paragraph (a)(1)(i) of this section, which the EPA has determined does not meet all of the Clean Air Act (CAA or ''Act'') title I part D requirements for NNSR programs. Sources subject to the plan must comply with the provisions and requirements of 40 CFR part 51, appendix S. The FIP also sets forth the criteria and procedures that the reviewing authority (as defined in paragraph (b)(1)(v) of this section) must use to issue permits under the plan. For the purposes of the plan, the term *SIP* means any EPA-approved implementation plan for the area administered by the MDAQMD.

(iii) Paragraph (f)(3) of this section sets forth procedures for appealing a permit decision issued under the plan.

(iv) The plan does not apply in Indian country, as defined in 18 U.S.C. 1151 and 40 CFR 49.167, located within the MDAQMD.

(2) *Where does the plan apply?* (i) The provisions of the plan apply to the proposed construction of any new major stationary source or major modification in the MDAQMD that is major for a nonattainment pollutant, if the stationary source or modification is located anywhere in the designated nonattainment area.

(3) *What general provisions apply under the plan?* The following general provisions apply to you as an owner or operator of a source:

(i) If you propose to construct a new major source or a major modification in a nonattainment area in the MDAQMD, you must obtain a Federal NNSR permit (''permit'') under the plan before beginning actual construction. You may not begin actual construction after the effective date of the plan without applying for and receiving a Federal NNSR permit that authorizes construction pursuant to the plan.

(ii) You must construct and operate your source or modification in accordance with the terms of your permit issued under the plan.

(iii) Issuance of a permit under the plan does not relieve you of the responsibility to fully comply with applicable provisions of any EPA-approved implementation plan or FIP, and any other requirements under applicable law. This includes obligations to comply with any EPA-approved SIP provisions that satisfy Federal new source review (NSR) requirements.

(b) *Definitions.* For the purposes of the plan, the definitions in 40 CFR part 51, appendix S, paragraph II.A, and 40 CFR 51.100 apply, except for paragraphs (b)(1) through (6) of this section, which replace the corresponding definitions found in part 51, appendix S:

(1) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(1)(i) and (ii) of this section, except that this paragraph (b)(1) shall not apply for calculating whether a significant emissions increase has occurred. Instead, 40 CFR part 51, appendix S, paragraphs II.A.24 and 30, shall apply for those purposes.

(i) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(ii) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) *Enforceable as a practical matter* means that an emission limitation or other standard is both legally and practicably enforceable as follows:

(i) An emission limitation or other standard is legally enforceable if the reviewing authority has the legal power to enforce it.

(ii) Practical enforceability for an emission limitation or for other standards (design standards, equipment standards, work practices, operational standards, pollution prevention techniques) in a permit for a source is achieved if the permit's provisions specify:

(A) A limitation or standard and the emissions units or activities at the source subject to the limitation or standard;

(B) The time period for the limitation or standard (*e.g.,* hourly, daily, monthly and/or annual limits such as rolling annual limits); and

(C) The method to determine compliance, including appropriate monitoring, recordkeeping, reporting, and testing.

(3) *Environmental Appeals Board* means the Board within the EPA described in 40 CFR 1.25(e).

(4) *Nonattainment pollutant* means any regulated NSR pollutant for which the MDAQMD, or portion of the MDAQMD, has been designated as nonattainment, as codified in 40 CFR 81.305, as well as any precursor of such regulated NSR pollutant specified in 40 CFR part 51, appendix S, paragraph II.A.31.(ii)(b).

(5) *Reviewing authority* means the Administrator of EPA Region IX, but it may include the MDAQMD if the Administrator delegates the power to administer the FIP under paragraph (g) of this section.

(6) *Significant* means, in reference to an emissions increase or a net emissions increase, and notwithstanding the definition of ''significant'' in 40 CFR part 51, appendix S, paragraph II.A.10, any increase in actual emissions of volatile organic compounds or oxides of nitrogen that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area if such emissions increase of volatile organic compounds or oxides of nitrogen exceeds 25 tons per year when aggregated with all other net emissions increases from the source over any period of 5 consecutive calendar years that includes the calendar year in which such increase occurred.

(c) *Does the plan apply to me?* (1) In any MDAQMD nonattainment area, the requirements of the plan apply to you under the following circumstances:

(i) If you propose to construct a new major stationary source and your source is a major source of nonattainment pollutant(s).

(ii) If you own or operate a major stationary source and propose to construct a major modification, where your source is a major source of nonattainment pollutant(s) and the proposed modification is a major modification for the nonattainment pollutant.

(2) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of the plan shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(d) *Permit approval criteria*—(1) *What are the general criteria for permit approval?* The criteria for approval of applications for permits submitted pursuant to the plan are provided in part D of title I of the Act and in 40 CFR 51.160 through 51.165 and 40 CFR part 51, appendix S.

(2) *What are the plan-specific criteria for permit approval?* Consistent with the requirements in 40 CFR part 51, appendix S, the reviewing authority shall not approve a permit application unless it meets the following criteria:

(i) The lowest achievable emission rate (LAER) requirement for any NSR pollutant subject to the plan and monitoring, recordkeeping, reporting, and testing as necessary to assure compliance with LAER.

(ii) Certification that all existing major sources owned or operated by the applicant in California are in compliance or, on a schedule for compliance, with all applicable emission limitations and standards under the Act.

(iii) Any source or modification subject to the plan must obtain emission reductions (offsets) from existing sources in the area of the proposed source (whether or not under the same ownership) such that there will be reasonable progress toward attainment of the applicable NAAQS. Notwithstanding 40 CFR part 51, appendix S, paragraph IV.G.5, interprecursor offsetting is not permitted between precursors of ozone. A demonstration of reasonable progress toward attainment shall include:

(A) A demonstration that the emission offsets will provide a net air quality benefit in the affected area, as required under 40 CFR part 51, appendix S, paragraph IV.A, Condition 4.

(B) A demonstration that emissions reductions otherwise required by the Act are not credited for purposes of satisfying the offset requirements in this paragraph (d)(2)(iii) and part D of title I of the Act.

(iv) An analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed major source or major modification that demonstrates that the benefits of the proposed major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(3) *What are the application requirements?* The owner or operator of any proposed new major stationary source or major modification shall submit a complete application using EPA Region IX's electronic system, which is described in paragraph (d)(3)(ii) of this section. The application must include the information listed in this paragraph (d)(3) as well as the demonstrations to show compliance with paragraphs (d)(2)(i) through (iv) of this section. The reviewing authority's designation that an application is complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(i) *Application content requirements.* (A) Identification of the permit applicant, including contact information.

(B) Address and location of the new or modified source.

(C) Identification and description of all emission points, including information regarding all nonattainment pollutants emitted by all emissions units included in the new source or modification.

(D) A process description of all activities, including design capacity, that may generate emissions of nonattainment pollutants, in sufficient detail to establish the basis for the applicability of standards.

(E) A projected schedule for commencing construction and operation for all emissions units included in the new source or modification.

(F) A projected operating schedule for each emissions unit included in the new source or modification.

(G) A determination as to whether the new source or modification will result in any secondary emissions.

(H) The emission rates of all regulated NSR pollutants, including fugitive and secondary emission rates, if applicable. The emission rates must be described in tons per year (tpy). If necessary, shorter-term rates must be described to allow for compliance using the applicable standard reference test method or other methodology specified (*i.e.,* grams/liter, parts per million volume (ppmv) or parts per million weight (ppmw), lbs/MMBtu).

(I) The calculations on which the emission rate information is based, including fuel specifications, if applicable, and any other assumptions used to determine the emission rates (*e.g.,* higher heating value (HHV), sulfur content of natural gas, VOC content).

(J) The calculations, pursuant to 40 CFR part 51, appendix S, paragraph IV.I and IV.J, that are used to determine applicability of the plan, including the emission calculations (increases or decreases) for each project that occurred during the contemporaneous period, as applicable.

(K) The calculations, pursuant to 40 CFR part 51, appendix S, paragraph IV.A, used to determine the quantity of offsets required for the new source or modification.

(L) Identification of actual emission reductions that meet the offset integrity criteria of being real, surplus, quantifiable, permanent and federally enforceable.

(M) If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols.

(N) Information necessary to determine whether issuance of such permit:

(*1*) May adversely affect federally-listed threatened or endangered species or the designated critical habitat of such species; or

(*2*) Has the potential to cause adverse effects on historic properties.

(ii) *Application process requirements.* To submit an application required under the plan, applicants may submit electronically through the Central Data Exchange (CDX)/Compliance and Emissions Data Reporting Interface (CEDRI) or submit by mail.

(A) CDX/CEDRI is accessed through *https://cdx.epa.gov.* First-time users will need to register with CDX. The CDX platform will also be used for any permit reporting requirements.

(B) Applicants that do not apply using CDX/CEDRI shall mail a signed application using certified mail (do not request signature) to: Air and Radiation Division, Permits Office (Air-3-1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

(C) Applicants that apply using certified mail must email a copy of the application and the certified mail tracking number to provide notification of delivery receipt to *R9AirPermits@epa.gov.*

(4) *What are the requirements for monitoring, recordkeeping, and reporting?* The reviewing authority shall require in the conditions of a permit such monitoring, recordkeeping, and reporting as necessary to facilitate compliance with the terms of a permit and to make them enforceable as a practical matter.

(e) *Public participation requirements*—(1) *What permit information will be publicly available?* With the exception of any confidential information as defined in 40 CFR part 2, subpart B, the reviewing authority must make available for public inspection the documents listed in paragraphs (e)(1)(i) through (iv) of this section. The reviewing authority must make such information available for public inspection at the appropriate EPA Regional Office and in at least one location in the area affected by the source, such as the MDAQMD headquarters location or a local library.

(i) All information submitted as part of your permit application as required under paragraph (d)(3) of this section.

(ii) Any additional information requested by the reviewing authority.

(iii) The reviewing authority's analysis of the application and any additional information submitted by you, including the LAER analysis and, where applicable, the analysis of your emissions reductions (offsets), your demonstration of a net air quality benefit in the affected area and your analysis of alternative sites, sizes, production processes and environmental control techniques.

(iv) A copy of the draft permit or the draft decision to deny the permit with the justification for denial.

(2) *How will the public be notified and participate?* (i) Before issuing a permit under the plan, the reviewing authority must prepare a draft permit and provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information, as set out in this paragraph (e)(2)(i) and paragraph (e)(2)(ii) of this section. The public notice must provide an opportunity for public comment and notice of a public hearing, if any, on the draft permit.

(A) The reviewing authority must mail a copy of the notice to you (the permit applicant), the MDAQMD (or the EPA if there is a delegation under paragraph (g) of this section), and the California Air Resources Board (CARB).

(B) The reviewing authority must comply with the methods listed in paragraph (e)(2)(i)(B)(*1*) or (*2*) of this section:

(*1*) The reviewing authority must post the notice on its website.

(*2*) The reviewing authority must publish the notice in a newspaper of general circulation in the area affected by the source.

(*3*) The reviewing authority may also include other forms of notice as appropriate. This may include posting copies of the notice at one or more locations in the area affected by the source, such as at post offices, libraries, community centers or other gathering places in the community.

(ii) The notices required pursuant to paragraph (c)(2)(i) of this section must include the following information at a minimum:

(A) Identifying information, including the name and address of the permit applicant (and the plant name and address if different);

(B) The name and address of the reviewing authority processing the permit application;

(C) The regulated NSR pollutants to be emitted, and identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project, including any emission limitations for these emissions unit(s);

(D) The emissions change involved in the permit action;

(E) Instructions for requesting a public hearing;

(F) The name, address and telephone number of a contact person in the reviewing authority's office from whom additional information may be obtained;

(G) Locations and times of availability of the information, listed in paragraph (e)(1) of this section, for public inspection; and

(H) A statement that any person may submit written comments, a written request for a public hearing or both, on the draft permit action. The reviewing authority must provide a period of at least 30 days from the date of the public notice for comments and for requests for a public hearing.

(3) *How will the public comment and will there be a public hearing?* (i) Any person may submit written comments on the draft permit and may request a public hearing. The comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing). The reviewing authority must consider all comments in making the final decision. The reviewing authority must keep a record of the commenters and of the issues raised during the public participation process, and such records must be available to the public.

(ii) The reviewing authority must extend the public comment period under paragraph (e)(2) of this section to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(iii) A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised at the hearing.

(iv) If requested, the reviewing authority may hold a public hearing at its discretion to give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written statements. The reviewing authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The reviewing authority must provide notice of any public hearing at least 30 days prior to the date of the hearing. Public notice of the hearing may be

concurrent with that of the draft permit, and the two notices may be combined. Reasonable limits may be set upon the time allowed for oral statements at the hearing.

(v) The reviewing authority must make the written transcript of any hearing available to the public.

(f) *Final permit issuance and administrative and judicial review*—(1) *How will final action occur and when will my Federal NNSR permit become effective?* After making a decision on a permit application, the reviewing authority must notify you, the permit applicant, of the decision in writing, and, if the permit is denied, provide the reasons for such denial and the procedures for appeal. If the reviewing authority issues a final permit to you, it must make a copy of the permit available at any location where the draft permit was made available. In addition, the reviewing authority must provide adequate public notice of the final permit decision to ensure that the affected community, the general public and any individuals who commented on the draft permit have reasonable access to the decision and supporting materials. A final permit becomes effective 30 days after service of the final permit decision, unless:

(i) A later effective date is specified in the permit;

(ii) Review of the final permit is requested under paragraph (f)(3) of this section; or

(iii) No comments requested a change in the draft permit or a denial of the permit, in which case the reviewing authority may make the permit effective immediately upon issuance.

(2) *What is the administrative record for each final permit?* (i) The reviewing authority must base final permit decisions on an administrative record consisting of:

(A) All comments received during any public comment period, including any extension or reopening;

(B) The tape or transcript of any hearing(s) held;

(C) Any written material submitted at such a hearing;

(D) Any new materials placed in the record as a result of the reviewing authority's evaluation of public comments;

(E) Other documents in the supporting files for the permit that were relied upon in the decision-making;

(F) The final Federal NNSR permit;

(G) The application and any supporting data furnished by you, the permit applicant;

(H) The draft permit or notice of intent to deny the application or to terminate the permit; and

(I) Other documents in the supporting files for the draft permit that were relied upon in the decision-making.

(ii) The additional documents required under paragraph (f)(2)(i) of this section should be added to the record as soon as possible after their receipt or publication by the reviewing authority. The record must be complete on the date the final permit is issued.

(iii) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (f)(2)(i) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.

(3) *Can permit decisions be appealed?* (i) Permit decisions may be appealed under the permit appeal procedures of 40 CFR 124.19, and the provisions of that section applicable to prevention of significant deterioration (PSD) permits shall apply to permit decisions under the FIP. A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the reviewing authority serves notice of the issuance of a final permit decision under the plan, in accordance with 40 CFR 124.19.

(ii) An appeal under paragraph (f)(3)(i) of this section is, under section 307(b) of the Act, a prerequisite to seeking judicial review of the final agency action.

(4) *Can my permit be reopened?* The reviewing authority may reopen an existing, currently-in-effect permit for cause on its own initiative, such as if it contains a material mistake or fails to assure compliance with requirements in this section. However, except for those permit reopenings that do not increase the emission limitations in the permit, such as permit reopenings that correct typographical, calculation and other errors, all other permit reopenings shall be carried out after the opportunity for public notice and comment and in accordance with one or more of the public participation requirements under paragraph (e)(2) of this section.

(5) *Can my permit be rescinded?* (i) Any permit issued under this section, or a prior version of this section, shall remain in effect until it is rescinded under this paragraph (f)(5).

(ii) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (f)(5)(iii) of this section may request that the reviewing authority rescind the permit or a particular portion of the permit.

(iii) The reviewing authority may grant an application for rescission if the application shows that the provisions of the plan would not apply to the source or modification.

(iv) If the reviewing authority rescinds a permit under this paragraph (f), the public shall be given adequate notice of the rescission determination in accordance with paragraph (e)(2)(i)(B) of this section.

(g) *Administration and delegation of the Federal nonattainment major NSR plan in the MDAQMD*—(1) *Who administers the FIP in the MDAQMD?* (i) The Administrator is the reviewing authority and will directly administer all aspects of the FIP in the MDAQMD under Federal authority.

(ii) The Administrator may delegate Federal authority to administer specific portions of the FIP to the MDAQMD upon request, in accordance with the provisions of paragraph (g)(2) of this section. If the MDAQMD has been granted such delegation, it will be the reviewing authority for purposes of the provisions for which it has been granted delegation.

(2) *Delegation of administration of the FIP to the MDAQMD.* This paragraph (g)(2) establishes the process by which the Administrator may delegate authority to the MDAQMD in accordance with the provisions in paragraphs (g)(2)(i) through (iv) of this section. Any Federal requirements under the plan that are administered by the delegate MDAQMD are enforceable by the EPA under Federal law.

(i) *Information to be included in the Administrative Delegation Request.* To be delegated authority to administer the FIP or specific portions of it, the MDAQMD must submit a request to the Administrator.

(ii) *Delegation Agreement.* A Delegation Agreement will set forth the terms and conditions of the delegation, will specify the provisions that the delegate MDAQMD will be authorized to implement on behalf of the EPA and will be entered into by the Administrator and the MDAQMD. The Agreement will become effective upon the date that both the Administrator and the MDAQMD have signed the Agreement or as otherwise stated in the Agreement. Once the delegation becomes effective, the MDAQMD will be responsible, to the extent specified in the Agreement, for administration of the provisions of the FIP that are subject to the Agreement.

(iii) *Publication of notice of the Agreement.* The Administrator will publish a notice in the **Federal Register** informing the public of any Delegation Agreement. The Administrator also will

publish the notice in a newspaper of general circulation in the MDAQMD. In addition, the Administrator will mail a copy of the notice to persons on a mailing list developed by the Administrator consisting of those persons who have requested to be placed on such a mailing list.

(iv) *Revision or revocation of an Agreement.* A Delegation Agreement may be modified, amended or revoked, in part or in whole, by the Administrator after consultation with the MDAQMD.

[FR Doc. 2024–14695 Filed 7–8–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 24–176; RM–11984; DA 24–562; FR ID 229917]

Television Broadcasting Services Cape Girardeau, Missouri

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed June 7, 2024, by Gray Television Licensee, LLC (Gray), the licensee of KFVS–TV, channel 11, Cape Girardeau, Missouri (Station or KFVS–TV). Gray held a construction permit to construct a facility on channel 32 at Cape Girardeau. Gray now requests that the Bureau substitute channel 11 for channel 32 at Cape Girardeau in the Table of TV Allotments, with the technical parameters as set forth in KFVS–TV's current license.

DATES: Comments must be filed on or before August 8, 2024 and reply comments on or before August 23, 2024.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Joan Stewart, Esq., Wiley Rein, LLP, 1776 K Street NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Video Division, Media Bureau, (202) 418–1647, at *Joyce.Bernstein@fcc.gov,* or Mark Colombo, Video Division, Media Bureau, (202) 418–7611, at *Mark.Colombo@fcc.gov.*

SUPPLEMENTARY INFORMATION: On May 5, 2021, the Bureau granted a petition for rulemaking submitted by Gray to substitute channel 32 for channel 11 at Cape Girardeau for KFVS–TV. On June 23, 2021, Gray was granted a construction permit for its new channel, with an expiration date of June 23, 2024. In its Petition, Gray stated that it would be unable to complete construction of the channel 32 facility by the expiration date. Thus, Gray requests amendment of the Table of TV Allotments to allow it to continue to operate on channel 11. Gray proposes to specify the technical parameters of its currently licensed channel 11 facility. We believe that the Petitioner's channel substitution proposal for KFVS–TV warrants consideration. KFVS–TV is currently operating on channel 11 and the substitution of channel 11 for channel 32 in the Table of TV Allotments will allow the Station to remain on the air and continue to provide service to viewers within its service area. Given that Gray proposes to utilize its currently licensed parameters, we believe channel 11 can be substituted for channel 32 at Cape Girardeau as proposed, in compliance with the principal community coverage requirements of § 73.618(a) of the Commission's rules (rules), at coordinates 37–25′–44.7″ N and 089–30′–14.2″ W. In addition, we find that this channel change meets the technical requirements set forth in § 73.622(a) of the rules.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 24–176; RM–11984; DA 24–562, adopted June 28, 2024, and released June 28, 2024. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this notice of proposed rulemaking/further notice of proposed rulemaking is available at *https://www.fcc.gov/proposed-rulemakings.*

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, amend the table in paragraph (j), under Missouri, by revising the entry for Cape Girardeau to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
Missouri	
* * * * *	
Cape Girardeau	11, 36.
* * * * *	

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[FR Doc. 2024–15040 Filed 7–8–24; 8:45 am]

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