downstream clinical genetic tests the impact of the bioinformatics software change on the whole exome sequencing constituent system genetic data output so they may implement appropriate corresponding actions.

Dated: September 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20550 Filed 9–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.410 to 1.440), revised as of April 1, 2024, in section 1.430(h)(2)–1, remove paragraph (ii) immediately following paragraph (b)(2).

[FR Doc. 2024–20701 Filed 9–10–24; 8:45 am]

BILLING CODE 0099–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0494; FRL–11442–02–R9]

Air Plan Approval; California; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on a revision to the South Coast Air Quality Management District (SCAQMD or ''the District'') portion of the California State Implementation Plan (SIP). This revision concerns the regulation of emissions of oxides of nitrogen (NO_X) and particulate matter (PM) associated with warehouses as indirect sources that attract or may attract mobile source emissions. The EPA is approving SCAQMD Rule 2305, ''Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program,'' to regulate these emission sources under the Clean Air Act (CAA or ''the Act'') as a SIP strengthening.

DATES: This rule is effective October 11, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2023–0494. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 972–3245; email: *evanshopper.lakenya@epa.gov.*

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

Table of Contents

I. Proposed Action

On October 12, 2023 (88 FR 70616) (''proposed rule''), the EPA proposed to approve SCAQMD Rule 2305 as a revision to the SCAQMD portion of the California SIP. Table 1 lists the SCAQMD rule addressed by the proposed rule with the dates that it was adopted by the SCAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	2305	Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program.	05/07/2021	08/13/2021

As described in the proposed rule, the purpose of SCAQMD Rule 2305 is to reduce local and regional emissions of NO_X and PM, and to facilitate local and regional emission reductions associated with warehouses and the mobile sources attracted to warehouses in the SCAQMD, to meet State and Federal air quality standards for ozone and fine PM ($PM_{2.5}$).[1] The rule applies within the jurisdiction of the SCAQMD, which includes all of Orange County, the non-desert portions of Los Angeles and San Bernardino counties, and all of Riverside County (except for the Palo Verde Valley in far eastern Riverside County).

Through the adoption of the 2016 South Coast Air Quality Management Plan (AQMP), the SCAQMD adopted certain ''facility-based mobile source measures,'' including a measure under which the SCAQMD committed to assess and identify potential actions to further reduce emissions from emission sources associated with warehouse distribution centers.[2] In 2019, the EPA approved the ozone portions of the 2016 South Coast AQMP, including the commitment to develop facility-based mobile source measures, including the measure focused on warehouse distribution centers.[3] The 2016 AQMP does not include an emission reduction estimate for the facility-based mobile source measure related to warehouses. In 2021, after assessing potential actions to further reduce emissions associated

[1] 88 FR 70616, 70617 (October 12, 2023).

[2] SCAQMD, Final 2016 Air Quality Management Plan, March 2017, pp. 4–25, 4–28 and 4–29. The 2016 South Coast AQMP designates the warehouse measure as MOB–03 (''Emission Reductions at Warehouse Distribution Centers'').

[3] 84 FR 52005 (October 1, 2019).

with warehouse distribution centers, the SCAQMD adopted Rule 2305 to fulfill the commitment from the AQMP.

In the proposed rule, the EPA described the requirements established by SCAQMD Rule 2305.[4] Rule 2305 applies to owners and operators of warehouses located in the SCAQMD with greater than 100,000 square feet of indoor floor space in a single building and who operate at least 50,000 square feet of the warehouse for warehousing activities. Warehouse operators are required either to earn points from specified emission reduction activities or to pay a mitigation fee. The points that warehouse operators earn are referred to as Warehouse Actions and Investments to Reduce Emissions Points (WAIRE Points). Warehouse facility owners or warehouse landowners may elect to opt in to earn WAIRE Points and transfer these points to a warehouse operator at the same site. Both warehouse facility owners and operators must comply with certain recordkeeping and reporting requirements under the rule.[5]

The principal substantive requirement in SCAQMD Rule 2305 is the requirement that each warehouse operator, or owner that opts in,[6] meet an annual compliance obligation by earning WAIRE Points. The annual compliance obligation, referred to as the WAIRE Points Compliance Obligation (WPCO), for each warehouse operator, or owner who opts in, is calculated based on Weighted Annual Truck Trips (WATTs) multiplied by a stringency factor (0.0025 points per WATT) and an annual variable (which accounts for the phased implementation of the rule).[7] Warehouse operators, or owners who opt in, are required to earn WAIRE Points either: through the completion of specified actions from the list of actions in the WAIRE Menu,[8] through completion of actions in an approved custom plan, through payment of a mitigation fee, or through a combination of these three options.[9]

In the proposed rule, the EPA described how it evaluated SCAQMD Rule 2305 and the basis for the EPA's preliminary conclusion that Rule 2305 generally meets all applicable CAA requirements with certain exceptions.[10] In support of our proposed action, the EPA preliminarily determined that:

- The SCAQMD and CARB met the procedural requirements for adoption and submission of SIPs and SIP revisions under CAA sections 110(a)(1), 110(a)(2), 110(l) and 40 CFR 51.102;
- The SCAQMD has adequate legal authority to implement Rule 2305 under State law, and that SCAQMD's implementation of Rule 2305 would not be preempted or prohibited by any State or Federal law. The EPA noted that the SCAQMD's legal authority was the subject of litigation in the U.S. District Court [11] at the time of the proposal; [12]
- SCAQMD Rule 2305 generally includes the elements necessary to provide for legal and practical enforceability. This includes clear applicability, recordkeeping, reporting, and exemption requirements that are sufficiently specific so that the persons affected by the regulation are fairly on notice as to what the requirements and related compliance dates are. However, SCAQMD Rule 2305 has certain deficiencies related to enforceability [13] that are the basis for the proposed approval as SIP-strengthening rather than a full approval;
- Although the EPA did not find a sufficient basis to credit Rule 2305 with achieving a specific amount of emissions reductions, the EPA expects that SCAQMD Rule 2305 will achieve additional emission reductions that will incrementally contribute to the overall reductions needed to attain the Ozone and $PM_{2.5}$ NAAQS in the South Coast Air Basin and Coachella Valley;
- The sunset clause in Rule 2305 purports to permit SCAQMD to remove the requirement from the EPA-approved SIP without the process required by section 110(l) at that time to support such removal. Failure to follow that process could interfere with attainment or reasonable further progress by foregoing emissions reductions needed for attainment or maintenance of the NAAQS at that future point in time; and
- In light of adoption of SCAQMD Rule 316 (''Fees for Rule 2305''), the SCAQMD will have adequate personnel and funding to implement Rule 2305.

For additional details on the SIP submission itself and the EPA's proposed action and related rationale, please see our proposed rule.

In this final rule, for the reasons given in the proposed rule and in the responses to comments provided in section II of this document, we are affirming the preliminary findings from the proposed rule that are listed in the previous paragraphs and are taking final action to approve Rule 2305 as a SIP-strengthening measure of the SCAQMD portion of the California SIP.

Since publication of the proposed rule, the U.S. District Court resolved the challenges to the SCAQMD's legal authority to enforce Rule 2305 in a case we refer to as ''*CTA* v. *SCAQMD*'' that was brought by the California Trucking Association (CTA or ''Plaintiff'') and Airlines for America (A4A or ''Plaintiff-Intervenor'') and that was grounded in alleged preemption under the CAA, the Airline Deregulation Act (ADA), and the Federal Aviation Administration Authorization Act (FAAAA). More specifically, in December 2023, the U.S. District Court denied motions for summary judgment filed by CTA and A4A and granted summary judgment to the SCAQMD with respect to the claims brought under the CAA, ADA, and FAAAA.[14] In January 2024, the Court entered judgment in favor of the SCAQMD and dismissed on the merits the claims brought under the CAA, ADA, and FAAAA.[15] In a separate order, based on a joint stipulation of the parties, the Court also dismissed with prejudice CTA's and A4A's remaining State law claims that had been included in the complaints.[16] The time to file a notice of appeal of the judgment expired

[4] 88 FR 70616, 70618–70620.

[5] More specifically, warehouse owners are required to submit Warehouse Operations Notifications (WONs), and warehouse operators are required to submit Initial Site Information Reports (ISIRs) and Annual WAIRE Reports (AWRs) to SCAQMD. The warehouse owner may choose to comply with the requirement to submit ISIRs or AWRs on behalf of the warehouse operator or may be required to submit the reports if they are also the warehouse operator.

[6] Under SCAQMD Rule 2305, warehouse operators are required to earn WAIRE points. Warehouse owners may choose to earn WAIRE points on behalf of the warehouse operator.

[7] SCAQMD Rule 2305(d)(1)(A) and Tables 1 and 2.

[8] SCAQMD Rule 2305, Table 3.

[9] SCAQMD Rule 2305(d)(1) and (2).

[10] 88 FR 70616, 70620–70625.

[11] *California Trucking Association* v. *South Coast Air Quality Management District,* C.D. Cal., Case #21–cv–06341 (''*CTA* v. *SCAQMD*'').

[12] At the time of publication of the proposed rule, the legal challenge to SCAQMD Rule 2305 in the U.S. District Court had not yet been resolved, and because the Court had not ruled against the SCAQMD, and because there was no injunction in place, there were no known legal obstacles that would have precluded EPA's own analysis and preliminary finding that the SCAQMD has adequate legal authority to implement the rule. Since publication of the proposed rule, the legal challenge has been resolved in SCAQMD's favor and against the claims of preemption.

[13] The proposed rule identified three specific types of deficiencies related to enforceability: two ambiguous definitions, the sunset clause and two instances of unbounded director's discretion.

[14] *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023.

[15] *CTA* v. *SCAQMD,* Judgment, Dkt. 168, January 18, 2024. *https://docs.justia.com/cases/federal/district-courts/california/cacdce/2:2021cv06341/827779/168.*

[16] *CTA* v. *SCAQMD,* Order Re Joint Stipulation and Consent Motion to Dismiss with Prejudice (Dkt. 166), Dkt. 167, January 18, 2024.

on February 20, 2024, and neither CTA nor A4A filed a notice of appeal.[17]

II. Public Comments and EPA Responses

The EPA's proposed rule provided a 30-day public comment period. The EPA received a total of 14 comment letters or submissions in response to the proposed rule. Five comment letters were supportive of our proposed action.[18] Two comment letters were generally supportive but include objections to certain aspects of our proposed action or rationale.[19] Six comment letters or submissions opposed our proposed action,[20] and one submission is not germane to our action.[21] All the comment letters or submissions can be found in the docket for this rulemaking. In the sections that follow, we summarize the significant adverse comments that oppose or object to certain aspects of our proposed action or rationale and provide our responses.

A. SCAQMD Comments and EPA Responses

SCAQMD Comment #1: The SCAQMD requests the EPA to clarify that Rule 2305, proposed as SIP strengthening without SIP credit, is fully federally enforceable.

EPA Response to SCAQMD Comment #1: The EPA agrees that SCAQMD Rule 2305 will be federally enforceable, upon EPA approval of the rule as part of the SIP. In our proposed rule, the EPA indicated that we had preliminarily found that the rule would not be ''fully enforceable,'' based on certain deficiencies that we had identified in Rule 2305, such as certain ambiguous definitions, instances of impermissible director's discretion, and the sunset clause. The EPA noted that these specific deficiencies related to enforceability warrant a SIP-strengthening approval, rather than a full approval, and preclude the Agency from assigning SIP credit for the reductions resulting from Rule 2305 until the deficiencies are resolved. The EPA did not mean to suggest that Rule 2305 would not be federally enforceable by the SCAQMD, the EPA, and citizens pursuant to CAA section 304 once the EPA approves it as part of the SIP. Rather, we were referring to features of Rule 2305, such as the absence of necessary definitions, that may interfere with enforcement under certain circumstances, as discussed in more detail in EPA responses to SCAQMD Comments #2, #3 and #4.

SCAQMD Comment #2: The SCAQMD requested clarification of the EPA's statements in the proposal concerning the sunset clause in Section (h) of Rule 2305. SCAQMD asserts that Rule 2305's ''sunset clause'' does not render the rule unenforceable prior to the time when the clause is invoked and the Rule's requirements expire. In addition, the SCAQMD disagrees with the EPA's finding that the sunset clause could interfere with attainment or reasonable further progress of the NAAQS under CAA section 110(l). The SCAQMD asserts that the sunset clause would never go into effect without an analysis by the SCAQMD of the potential need for the rule for attainment of a new standard or for maintenance of an existing standard. The Executive Officer will then give a recommendation to the SCAQMD's Board on whether to retain or remove the sunset clause.

EPA Response to SCAQMD Comment #2: In the EPA's proposed rule, we identified the sunset clause in Rule 2305 as a deficiency related to enforceability and as a feature of the rule that could interfere with attainment or reasonable further progress by foregoing emissions reductions that may be needed for attainment or maintenance of the NAAQS.[22] The EPA affirms those statements in this final rule. However, the EPA is clarifying that its concern is not that the sunset clause implicates enforceability prior to the time the District invokes the sunset clause and the requirements of the rule expire. We understand that, until invoked, the sunset clause has no effect on enforceability. However, after it is invoked, the rule is no longer enforceable at all; hence, our concern in terms of enforceability. In this context, our use of the term ''fully enforceable'' refers to enforceability of a rule as an enforceable SIP requirement unless and until the EPA were to approve a SIP revision removing the provision from the SIP, in compliance with the procedural and substantive requirements applicable to such a SIP revision. For example, any future elimination of Rule 2305 from the SIP would have to entail an analysis under section 110(l) at that future point in time to assure that its removal would not interfere with attainment or reasonable further progress requirements for any relevant NAAQS or be inconsistent with any applicable requirements of the CAA at that future time. The EPA cannot approve a SIP provision with a sunset clause that would sidestep the applicable procedural and substantive requirements of the CAA and purport to predetermine such an outcome. The current sunset clause in Rule 2305 does not provide for that required process.[23]

The SCAQMD also asked for clarification with respect to the EPA's concern that the sunset clause is a feature of the rule that could interfere with attainment or reasonable further progress because SCAQMD could potentially invoke it at a time when the emissions reductions associated with the rule would still be needed for such purposes for one or more NAAQS at that future point in time. To find the sunset clause acceptable at this time for this rulemaking, the EPA would need to determine that the sunset clause would not interfere with attainment or reasonable further progress or any other requirement of the CAA when, sometime in the future, it is invoked. But the EPA has no basis to make such a determination at the present time because we have no basis for knowing the precise conditions relative to CAA requirements that will exist in the South Coast Air Basin in the future when the District may seek to invoke the sunset clause. The EPA acknowledges the internal safeguards that SCAQMD has imposed upon itself in the sunset clause to prevent such interference. But we conclude that unilateral action on the part of the SCAQMD itself as contemplated in the sunset clause does not suffice to meet procedural and substantive requirements that would be

[17] *CTA* v. *SCAQMD,* Defendents' Request for Publication of Order Denying Plaintiff and Plaintiff-Intervenor's Motion for Summary Judgement, Dkt. 169, March 5, 2024.

[18] Supportive comment letters were submitted by the CARB, Clean Energy, Consumer Reports, a group of environmental and community groups, and certain members of Congress.

[19] SCAQMD and the Center for Community Action and Environmental Justice (CCAEJ) submitted letters that generally support the proposed action but also include comments that object to certain aspects of the proposed action or rationale. SCAQMD also submitted a late comment that addresses some of the objections raised by CCAEJ, and SCAQMD's outside counsel in the *CTA* v. *SCAQMD* case submitted a late comment consisting of the Court's order denying the plaintiff's and plaintiff-intervenor's motions for summary judgment and granting summary judgment for the defendants.

[20] Airlines for America (A4A), a group of trucking and business associations (collectively referred to herein as ''California Trucking Association'' or ''CTA''), the Port of Long Beach (POLB), International Warehouse Logistics Association (IWLA), a representative of a third-party warehouse business (''BAR Logistics''), and a private citizen (''Private Citizen'') submitted comments that oppose EPA's proposed action.

[21] A private citizen submitted a comment that refers generally to the poor air quality conditions found in California but does not provide comments that directly relate to our proposed action.

[22] 88 FR 70616, 70624.

[23] Memorandum dated September 23, 1987, from J. Craig Potter (EPA) to Addressees, Subject: ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,'' subsection titled ''Effect of Changed Conditions.''

applicable to a revision of the SIP to eliminate Rule 2305, including a determination that rescission of the rule would not interfere with attainment or reasonable further progress of the NAAQS at that future point in time. To resolve this issue, the SCAQMD must remove the sunset clause and then, in the future, if the SCAQMD chooses to rescind Rule 2305, follow the normal course of action in rescinding rules from the SIP, *i.e.,* through a SIP revision and EPA approval in accordance with applicable procedural and substantive requirements, including CAA section 110(k) and section 110(l).

SCAQMD Comment #3: The SCAQMD does not agree with the proposed rule with respect to where the EPA finds that instances of director's discretion in the Custom WAIRE Plan option may impair enforceability of the rule. The SCAQMD contends that Rule 2305 does not grant the District's Executive Officer ''unilateral and unbounded'' discretion to determine Rule compliance. The SCAQMD states that Rule 2305 sets forth detailed, objective requirements for all aspects of Custom WAIRE Plans, including the contents of the application for such a plan, the District's review and approval of the application, and the tracking of the applicant's progress in completing the actions approved as part of the Custom WAIRE Plan.

The SCAQMD stated that Rule 2305 includes provisions that authorize the Executive Officer to make only two limited determinations regarding Custom WAIRE Plans. The SCAQMD contends that in neither case is the Executive Officer's discretion ''unilateral and unbounded.'' First, in directing the Executive Officer to assess whether the emissions reductions associated with a Custom WAIRE Plan are ''quantifiable, verifiable, and real,'' the SCAQMD states that the Rule articulates well-understood criteria of the kind that the EPA has already approved for inclusion in the SIP many times before. The SCAQMD also notes that, under Section (d)(4)(B)(v), it also must make Custom WAIRE Plans available for public review for 30 days before the Executive Officer can approve them, during which time interested parties, including the EPA, can comment on whether a proposed plan satisfies the Rule's criteria.

Second, the SCAQMD notes that the provision of Rule 2305 that directs the Executive Officer to determine whether a warehouse operator is ''making adequate progress'' to complete an approved Custom WAIRE Plan also requires that the District provide 30 days' notice to the owner or operator and an explanation of any deficiencies in implementation before the District can rescind the Custom WAIRE Plan. If the warehouse operator or owner ultimately withdraws the Custom WAIRE Plan, the warehouse operator must comply with Rule 2305 via the WAIRE Menu or the mitigation fee options, neither of which involves Executive Officer discretion. Thus, the SCAQMD contends that any exercise of discretion in this instance can only serve to protect air quality by requiring the warehouse operator to comply with other options; it would not grant the operator any flexibility not provided expressly in Rule 2305. In short, in SCAQMD's view, nothing about the Custom WAIRE Plan provisions impairs the Federal enforceability of the Rule.

EPA Response to SCAQMD Comment #3: In EPA's proposed rule, we identified two specific instances of director's discretion provisions in connection with the Custom WAIRE Plan option under Rule 2305 and preliminarily concluded that these provisions are impermissible because they would give unbounded authority to SCAQMD to make changes that the EPA cannot evaluate the impact of and because they may impair enforceability of the rule.[24] The EPA has reviewed the SCAQMD's comment on this issue and the related citations provided by the SCAQMD. The EPA's evaluation of these comments has caused the agency to revise its view of one of the two provisions and also identified an additional potential impermissible director's discretion provision within Rule 2305.

Based on that review, for reasons given below, we affirm our finding that the Executive Officer's discretion to determine whether WAIRE Points from a Custom WAIRE Plan are ''quantifiable, verifiable, and real'' is insufficiently bounded, but we now agree that the Executive Officer's discretion to determine whether a warehouse owner or operator is making adequate progress to complete an approved Custom WAIRE Plan is appropriately bounded in a way that the EPA can approve.

First, with respect to the Executive Officer's discretion to determine whether WAIRE Points from a Custom WAIRE Plan are ''quantifiable, verifiable, and real,'' we note that the language in Rule 2305(d)(4)(A)(iii) gives the Executive Officer of SCAQMD the sole authority to determine whether emissions reductions are valid, does not impose specific standards or parameters for such a determination, and thus potentially impedes the EPA and the public from enforcing this provision in the event either were to disagree with the District's conclusion about the validity of the emission reductions.[25] We acknowledge Section (d)(4)(B)(v) of Rule 2305 as providing for public review of Custom WAIRE Plan applications prior to the SCAQMD approval, but we do not find the public process provided on individual applications to be a substitute for provisions in the rule that limit the Executive Officer's exercise of discretion within adequate specific boundaries. Moreover, without such boundaries and without an analysis of the potential impacts that exercise of this discretion could have, the EPA cannot evaluate the consequences of this director's discretion feature of Rule 2305 and what that could mean in terms of stringency, emission reduction credit, and other important considerations for approval of a SIP provision. Thus, this provision contains impermissible director's discretion that is inconsistent with CAA requirements.

In its comments, the SCAQMD asserted that the terms ''quantifiable, verifiable, and real'' are, ''well-understood criteria of the kind that EPA has already approved for inclusion in the SIP many times before'' and cites SCAQMD Rule 1309, ''Emission Reduction Credits,'' Bay Area AQMD Rule 2–2–605.1, ''New Source Review,'' and San Joaquin Valley UAPCD Rule 2201, ''New and Modified Stationary Source Review Rule.'' These rules pertain to the pre-construction New Source Review (NSR) permitting program that generally requires that offsets needed under the program are real, quantifiable, surplus, permanent, and federally enforceable. However, for example, SCAQMD's definitions rule for its NSR program, Rule 1302, defines ''quantifiable emissions,'' ''permanent,'' and ''federally enforceable.'' These definitions are not applicable to SCAQMD Rule 2305, and, notably, ''verifiable'' is not a term commonly used in the NSR program. Thus, the EPA disagrees that the ostensible understood meaning of these terms negates the director's discretion concerns about Section (d)(4)(A)(iii).

[24] 88 FR 70616, 70619.

[25] A potential remedy would be to remove ''as determined by the Executive Officer'' from the provision and add definitions in Rule 2305 for the terms ''quantifiable,'' ''verifiable,'' and ''real.'' Also, both Sections (d)(4)(A)(ii) and (d)(4)(A)(iii) in Rule 2305 rely on the WAIRE Program Implementation Guidelines to determine the WAIRE Points for a given action under a Custom WAIRE Plan. As such, to fully address the issue of insufficiently bounded director's discretion in Rule 2305, the SCAQMD should adopt and submit the WAIRE Program Implementation Guidelines to the EPA as a SIP revision.

The provision would authorize the Executive Officer unilaterally to make key determinations that would bind the EPA and other parties and potentially interfere with enforcement of the requirements of Rule 2305.

Second, with respect to the Executive Officer's discretion to determine that a warehouse facility owner or operator is not making adequate progress to complete an approved Custom WAIRE Plan as provided in Rule 2305(d)(4)(D), after consideration of SCAQMD's comments on the proposal we find that this is not an impermissible director's discretion provision. Based upon additional explanation in SCAQMD's comments, we now agree that the discretion within this specific provision is sufficiently bounded and that the consequences of exercise of the authority can be adequately understood and evaluated by the EPA at the time of this approval. SCAQMD has explained that the scope of this discretion is limited to the issue of whether or not the regulated party has made sufficient progress to complete a Custom WAIRE Plan. Although there are no specific regulatory definitions or other guideposts to specify what would constitute sufficient progress, the EPA concludes that in this instance the scope of discretion is itself limited in a way that does not functionally authorize SCAQMD to revise Rule 2305 without meeting proper procedural requirements or interfere with potential enforcement of the requirements of Rule 2305. In the event that the Executive Officer were to conclude that a warehouse facility owner or operator is not making adequate progress to complete an approved Custom WAIRE Plan (''Plan'') and rescinds approval of the Plan, then the warehouse owner or operator must still comply with Rule 2305 under the remaining options provided in the rule. Thus, at the time of this approval the EPA can evaluate the boundaries on the exercise of discretion and can anticipate what the potential impacts would be on Rule 2305 were the Executive Officer to exercise this particular form of discretion.

Further, we note that, under Section (d)(4)(E), Rule 2305 provides that, if the expected WAIRE Points from an approved Custom WAIRE Plan are not earned during the applicable compliance period, the warehouse facility owner or operator whose Custom WAIRE Plan was approved shall be in violation of this rule unless the owner or operator demonstrates that they have met their Warehouse Points Compliance Obligation by the date that they submit their Annual WAIRE Report using WAIRE Points earned through completion of actions listed in the WAIRE menu or through mitigation fees. Thus, Rule 2305 provides for consequences for failure to complete an approved Custom WAIRE Plan even if the Executive Officer fails to exercise discretion where warranted to make the determination under Section (d)(4)(D) of Rule 2305 that a warehouse facility or land owner or operator is not making adequate progress.

Finally, the EPA's review of Rule 2305 in light of SCAQMD's comments concerning the director's discretion issue caused us to examine the provisions of the rule again more closely. In the proposal, we had noted that Section (g)(3) provides that the Executive Officer can grant full or partial exemptions from compliance with the WAIRE Points requirements of Rule 2305 under certain circumstances.[26] In the event of unforeseen circumstances that are beyond the control of the owner or operator, the owner or operator may apply for a partial or full exemption. Although Section (g)(3) imposes some boundaries on this authority, it would nevertheless operate to allow the Executive Officer unilaterally to excuse violations of Rule 2305.

The State and District have adopted Rule 2305 applicable to owners or operators of warehouses to achieve emission reductions to help provide for attainment and maintenance of the NAAQS. To the extent that Rule 2305 is a SIP emission limitation, it must meet the definition of that term in CAA section 302(k), which provides that it must be continuous. If a SIP provision is an emission limitation, to be continuous it could not include an exemption for malfunctions, such as that provided in Section (g)(3), including ad hoc exemptions that the Executive Officer might grant through exercise of director's discretion. Such exemption decisions would be binding on other parties and thus impede potential enforcement actions by the EPA or others that may not agree with the decision of the Executive Officer, thereby interfering with enforcement by the EPA and other parties and imposing the enforcement discretion decisions of the Executive Officer on the EPA and other parties.

SCAQMD Comment #4: The SCAQMD acknowledges that the definitions in Rule 2305 for the terms ''Near-Zero Emission (NZE) Trucks'' and ''Zero-Emission (ZE) Trucks'' rely on sections of the California Code of Regulations (CCR) that are not part of the SIP but disagrees that such reliance may make the terms ambiguous, which in turn may have implications for enforceability.

EPA Response to SCAQMD Comment #4: In EPA's proposed rule, the EPA noted that two critical definitions in Rule 2305 rely on cross-references to CCR sections that are not approved as part of the SIP, and thus, the definitions could be ambiguous for the purposes of enforcement of the SIP. As a basic principle, the EPA believes that all SIP provisions should be clear and unambiguous to assure that regulated entities, regulators, and courts can have a common understanding of the requirements. Failure to incorporate into the SIP definitions of key terms can lead to unintended and unnecessary ambiguities in a SIP provision that may only come to light later. It is possible that, in an enforcement proceeding for SIP requirements, a court may judicially notice CCR sections that are not part of the SIP but that a SIP rule cross-references, to interpret the terms at issue. However, case law warrants caution in the context of reliance on out-of-SIP materials in a SIP enforcement proceeding.[27]

The EPA acknowledges that the existing cross references to CCR provisions outside Rule 2305 do provide definitions of these terms, but this fact also raises a different issue. Because the CCR sections at issue are not part of the approved SIP, the EPA is concerned that CARB could revise these defined terms outside of the statutory SIP revision process thereby potentially amending Rule 2305 (through the cross-reference to the CCR sections) unilaterally also outside of the SIP revision process. Inclusion of necessary definitions within the SIP provision itself, or otherwise submitting them for inclusion in the SIP, obviates these potential problems. Thus, the EPA affirms our statements in the proposed rule as to these two definitions. However, the EPA anticipates that CARB will be submitting the CCR definitional sections on which Rule 2305 relies for inclusion into the SIP and that the issue will be resolved upon the EPA's approval of the definitions as part of the SIP.[28]

SCAQMD Comment #5: The SCAQMD comments that the proposed rule incorrectly describes the WAIRE Program Online Portal (POP) as

[26] 88 FR 70616, 70618.

[27] *El Comité Para el Bienestar de Earlimart* v. *Warmerdam,* 539 F.3d 1062 (9th Cir. 2008) (CAA enforcement by citizen group of requirements precluded because, while cited in connection with the EPA's approval of the SIP, the specific requirements were not incorporated into SIP).

[28] 88 FR 70616, 70623. On August 8, 2023, CARB submitted the Advanced Clean Trucks Regulation, which includes one of the two CCR sections, 13 CCR section 1963, to the EPA for approval as a SIP revision.

providing the public information about how warehouse operators and owners are complying with Rule 2305 and how WAIRE Mitigation Program funds are spent. SCAQMD clarifies that the function and purpose of the WAIRE POP is to collect information from regulated entities (warehouse owners and operators), not to provide or distribute information about the WAIRE Program to the public. The SCAQMD indicates that it has created a separate web page to provide information on the WAIRE Program to the public. That page hosts links to various resources related to the WAIRE Program, including the WAIRE Program's annual report. The SCAQMD indicates that it is evaluating a proposal to include additional WAIRE Program data, including aggregated information about compliance obligations and completed compliance actions, in its Facility Information Detail (''FIND'') tool.

EPA Response to SCAQMD Comment #5: The EPA appreciates the clarification by the SCAQMD regarding the function and purpose of the WAIRE POP. The EPA understands that a separate web page created by the SCAQMD provides the public with certain information about the WAIRE program. In addition, the public may request access to WAIRE data not available on-line from SCAQMD, such as the periodic reports that warehouse owners and operators are required to submit to the SCAQMD under Rule 2305, through the California Public Records Act requests under State law.[29] While there is no CAA requirement that such data be made available on-line, the EPA notes that making such data available on-line would allow the public to access the information in a more timely manner than making a request under the California Public Records Act.

B. The Port of Long Beach (POLB) Comments and EPA Responses

POLB Comment #1: Referring to the *CTA* v. *SCAQMD* case, the POLB asserts that it is improper for the EPA to issue a rule interpreting SCAQMD's legal authority to adopt and implement an indirect source review (ISR) rule while a legal action brought by CTA concerning the validity of the rule is pending. The POLB contends that the EPA should defer taking action until the judiciary resolves the pending litigation.

EPA Response to POLB Comment #1: The EPA disagrees that it is improper for us to take action on a SIP submission in a situation where the State or local rules submitted for approval into the SIP are subject to a pending legal challenge. First, CAA section 110(k) requires the EPA to take action on submissions no later than 12 months after the EPA finds the submission complete or it becomes complete by operation of law. If the EPA does not act within the prescribed period, the EPA may be subject to a deadline lawsuit to compel that action. The CAA does not provide additional time for EPA action on a submission merely because there is a pending legal challenge related to some aspect of the SIP submission.[30]

More importantly, however, EPA separately considered the legal authority issue involved in the then pending litigation to which the commenter referred. Pursuant to CAA section 110(a)(2)(E), a necessary part of the EPA's evaluation of a SIP submission is whether the submission includes necessary assurances that the State (or District, in this case) has adequate authority under State law to carry out such SIP submission and is not prohibited by any provision of Federal or State law from doing so.[31] For this rulemaking action, the EPA needed to address the issue of whether the State and District have adequate legal authority under State law to implement SCAQMD Rule 2305, and whether the State or District was prohibited by any Federal or State law from implementing Rule 2305, as part of the basis for proposing approval or disapproval of SCAQMD Rule 2305 under CAA section 110(k). The mere fact of a pending judicial challenge does not impede EPA from making a determination that the State and District have provided necessary assurances that they have adequate authority. The EPA set forth its evaluation of the State and District's explanation of their authority for Rule 2305 in the proposal rule.[32]

Lastly, the EPA notes that, in any event, the *CTA* v. *SCAQMD* case to which the POLB refers has been resolved in favor of the SCAQMD, and we have taken the Court's actions into account in finalizing approval of SCAQMD Rule 2305 as a revision to the California SIP.[33] In short, the court's actions confirmed the EPA's view that the State and district are not prohibited by any Federal law from carrying out Rule 2305 and thus have provided the necessary assurances of adequate legal authority for Rule 2305 for the purposes of CAA section 110(a)(2)(E).

POLB Comment #2: The POLB objects to the EPA's evaluation in the proposed rule of the legal authority of the SCAQMD to implement Rule 2305 and asserts that SCAQMD Rule 2305 is preempted because, although styled as an ISR rule, it directly regulates mobile sources and ''compels the manufacturer or user to change emission control design of mobile sources or creates incentives so onerous as to in effect be a purchase mandate.'' The POLB states that Rule 2305 does both of these and is, therefore, preempted by the CAA.

EPA Response to POLB Comment #2: As to the issue of whether SCAQMD Rule 2305 represents a legitimate ISR rule as authorized by CAA section 110(a)(5), we considered whether Rule 2305 represents a de facto purchase requirement for ZE or NZE trucks and thus whether it might be preempted under CAA section 209(a).[34] In the EPA's proposed rule, we preliminarily concluded that, in adopting Rule 2305, the SCAQMD has not adopted or attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines preempted by CAA section 209(a).

The EPA based its preliminary conclusion, in part, on the similarities between SCAQMD Rule 2305 and the ISR rule at issue in the *National Association of Home Builders* v. *San Joaquin Valley Unified Air Pollution Control District,* 627 F.3d 730 (9th Cir. 2010) (*NAHB* v. *SJVUAPCD*) case, including the design of Rule 2305 to regulate at the level of the indirect source, not at the level of mobile sources the indirect source may attract. In Rule 2305, ''[t]the 'baseline' amount of emissions, and the required reduction in emissions from that baseline, are both calculated in terms of the [indirect

[29] The California Public Records Act is a State law that provides the public the right to inspect and the right to promptly obtain copies of ''public records.'' The California Public Records Act does not provide for creation or preparation of a record that does not exist at the time of the request. The California Public Records Act can be found at California Government Code sections 7920–7931.

[30] In this instance, SCAQMD Rule 2305 was submitted to the EPA as a SIP revision on August 13, 2021, and was deemed complete by operation of law on February 13, 2022. In July 2023, we were sued for failure to take action within the prescribed period. See *Center for Community Action and Environmental Justice* v. *EPA,* 23-cv-03571, U.S. District Court, Northern District of California.

[31] See CAA section 110(a)(2)(E).

[32] 88 FR 70616, 70620–70623.

[33] As noted previously in this document, in December 2023, the U.S. District Court denied motions for summary judgment filed by CTA and A4A and granted summary judgment to the SCAQMD with respect to the claims brought under the CAA, ADA, and FAAAA. Subsequently, the Court has entered judgment in favor of the SCAQMD and dismissed on the merits the claims brought under the CAA, ADA, and FAAAA, and by separate order, the Court also dismissed with prejudice CTA's and A4A's remaining State law claims that had been included in the complaint. No appeal was filed in this case.

[34] 88 FR 70616, 70622–70623.

source site] as a whole.'' [35] This ''site-based'' approach to regulating emissions ''is precisely what allows the Rule to avoid preemption under section 209(e)(2).'' [36] That Rule 2305 is properly characterized as an ISR program under CAA section 110(a)(5) distinguishes it from the vehicle purchase mandate at issue in the Supreme Court *EMA* case.[37]

In addition, the EPA considered that Rule 2305 lacks the indicia of a *de facto* regulation of either motor vehicles or nonroad vehicles or engines. As explained further in the proposed rule, Rule 2305 applies to warehouse operators and provides multiple options for meeting the annual WPCO, a metric that is based not on truck emissions but on truck trips. The number of truck visits is used in Rule 2305 because it is representative of the total activity at, and emissions associated with, a warehouse. The various options available (WAIRE Menu, Custom WAIRE Plan, or Mitigation Fee) to warehouse operators that do not involve acquisition of, or contracting for, ZE or NZE trucks to earn WAIRE Points further support a conclusion that in Rule 2305, the SCAQMD has not adopted or attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines preempted by CAA section 209(a).

Regardless of the commenter's assertions about alleged preemption, in the months following publication of the proposed rule, the U.S. District Court entered judgment in favor of the SCAQMD in the *CTA* v. *SCAQMD* case and dismissed on the merits the claims brought against SCAQMD's adoption of Rule 2305 under the CAA, ADA and FAAAA.[38] For this final rule, we have reviewed the decision [39] of the District Court and find that it supports our preliminary conclusion set forth in the proposed rule that the SCAQMD is not prohibited from implementing Rule 2305 under the CAA. Moreover, we are aware of no other legal challenge to Rule 2305 that might prevent SCAQMD from carrying out Rule 2305. Therefore, the EPA affirms in this final rule our conclusion that, in adopting Rule 2305, the SCAQMD has not adopted or attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines preempted by CAA section 209(a).

POLB Comment #3: The POLB further asserts that the EPA's reliance on the decision in *National Association of Home Builders* v. *San Joaquin Valley Unified Air Pollution Control District,* 627 F.3d 730, 737–738 (9th Cir. 2010) is misplaced because the ISR regulation at issue in that case applied to new sources whereas SCAQMD Rule 2305 applies to both new and existing warehouses. Moreover, the POLB states that the omission of the word ''existing'' in CAA section 110(a)(5)(D) indicates that Congress intended to exclude existing sources from ISR.

EPA's Response to POLB Comment #3: With respect to the issue of whether ISR programs as described in CAA section 110(a)(5) may apply to existing as well as new or modified indirect sources, the EPA first notes that the EPA did not rely on the decision in *NAHB* v. *SJVUAPCD* in evaluating this particular issue. Instead, in the proposed rule, the EPA discussed how the Agency considered this particular issue by evaluating the statutory language in CAA sections 110(a)(5)(D), (E) and 116.[40] More specifically, the EPA acknowledged that the language of CAA section 110(a)(5) does not explicitly answer the question whether States may include both existing and new sources and cited, as an example, the statutory language in CAA section 110(a)(5)(D) cited by the POLB.

As explained in the preamble to the proposed rule, CAA section 110(a)(5)(D) in relevant part defines an indirect source review program as one ''including'' such measures as new or modified sources. The EPA does not, however, read this definition to restrict States from having such programs that extend to existing sources if they elect to do so. Instead, the use of the term ''including'' preceding the reference to ''new or modified indirect source'' indicates that regulation of new or modified indirect sources is illustrative of the scope of this provision, not limiting. The EPA also noted the statutory language in CAA section 110(a)(5)(C), which defines ''indirect source'' more broadly to encompass both existing and new sources, and CAA section 116, which explicitly provides that States retain authority to regulate more stringently in SIP provisions than otherwise required by Federal law, except where preempted from doing so. The EPA continues to find that the best reading of this language is that States may include existing sources as a permissible category within a CAA indirect source program. The POLB does not address the EPA's discussion of either CAA section 110(a)(5)(D) or CAA section 116 in its comments.

Moreover, as the Ninth Circuit observed in *NAHB,* the purpose of Congress's enactment of the indirect source review provisions in section 110(a)(5) was ''to return power to states and localities'' over indirect source programs.[41] This purpose further corroborates EPA's view that the best reading of the Act does not preclude a State's ability to adopt an indirect source review program that covers existing sources.

In the EPA's proposed rule, upon its review of CAA section 110(a)(5), the EPA acknowledged that the statutory language does not clearly indicate whether Congress actually intended the definition of ''indirect source program'' to function as a restriction on the ability of States to adopt an indirect source program that extends to existing sources as well as new or modified sources and for the EPA to have authority to in turn approve such a program into the State's SIP. The EPA indicated that the EPA did not consider such a restrictive reading of the provision to be reasonable or logical, absent a clearer prohibition.[42] That is, read in light of the above-described statutory context and purpose, the best reading of the statute is that States may establish indirect source programs for new and modified sources, as well as existing sources.

POLB Comment #4: The POLB also states that the EPA does not have the experience or expertise to interpret the ADA or the FAAAA, and its opinion regarding preemption concerning these laws is outside the EPA's purview.

EPA's Response to POLB Comment #4: Under CAA section 110(a)(2)(E), the EPA must evaluate SIP submissions to ensure that the State has provided necessary assurances that the State (or District, in this case) is not prohibited by any provision of State or Federal law from carrying out the SIP or SIP revision (in this case, Rule 2305). The SIP

[35] 88 FR 70616, 70622, citing *NAHB* v. *SJVUAPCD,* 627 F.3d 730, 737.

[36] 88 FR 70616, 70622, citing *NAHB* v. *SJVUAPCD,* 627 F.3d 730, 739.

[37] *Engine Manufacturers Ass'n* v. *South Coast Air Quality Management District,* 541 U.S. 24655 (2004) (''*EMA*''). In *EMA,* the Supreme Court held that a ''standard'' under CAA section 209(a), which the Court described as ''a requirement that a vehicle or engine not emit more than a certain amount of pollutant, be equipped with a certain type of pollution-control device, or have some other design feature related to the control of emissions,'' is preempted under Section 209(a) whether applied to manufacturers through a sales mandate or to buyers through a purchase mandate. *EMA,* at 253–255.

[38] *CTA* v. *SCAQMD,* Judgment, Dkt. 168, January 18, 2024.

[39] *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023), pp. 19–29.

[40] 88 FR 70616, 70622.

[41] 627 F.3d at 738 (citing *Sierra Club* v. *Larson,* 2 F.3d 462, 467 (1st Cir. 1993)).

[42] 88 FR 70616, 70622.

submission for SCAQMD Rule 2305 includes the District's documentation of comments submitted during the District's rule adoption process and the District's responses to those comments. Through the EPA's review of this material, the EPA was made aware of the claims regarding possible preemption under the ADA or FAAAA, and thus, in accordance with section 110(a)(2)(E), we made a preliminary judgment about possible preemption (in the context of assuring that no Federal or State law prevented the carrying out of the SIP) to provide an appropriate basis to propose approval of SCAQMD Rule 2305 under CAA section 110(k).

Regardless of the commenter's assertions about alleged preemption, in the months following publication of the proposed rule, the U.S. District Court entered judgment in favor of the SCAQMD in the *CTA* v. *SCAQMD* case and dismissed on the merits the claims brought against SCAQMD's adoption of Rule 2305 under the CAA, ADA and FAAAA.[43] For this final rule, we have reviewed the decision [44] of the District Court and find that it supports our preliminary conclusion set forth in the proposed rule that the SCAQMD is not prohibited from implementing Rule 2305 under the ADA or FAAAA for the purpose of CAA section 110(a)(2)(E). Moreover, we are aware of no other legal challenge to Rule 2305 that might prevent SCAQMD from carrying out Rule 2305. Lastly, we note that we consulted with the U.S. Department of Transportation on our responses to comments related to ADA and FAAAA preemption in this final rule. Therefore, the EPA affirms in this final rule the conclusion that the SCAQMD is not prohibited from implementing Rule 2305 under the ADA or FAAAA.

POLB Comment #5: Citing the Supreme Court's decision in *West Virginia* v. *EPA,*[45] the POLB also states that the EPA's view that SCAQMD Rule 2305 should be upheld absent a ''clearer prohibition'' in the CAA conflicts with the ''major questions doctrine'' in which an executive agency cannot regulate unless it can ''point to clear congressional authorization'' to do so.

EPA's Response to POLB Comment #5: The POLB raises this particular objection to the EPA's proposed approval in a single sentence and fails to elaborate on how the EPA's action conflicts with the major questions doctrine. In any event, the EPA does not believe the major questions doctrine is applicable here.

The major questions doctrine provides that in extraordinary cases involving statutes that confer authority upon an administrative agency, the ''history and the breadth of the authority that [the Agency] has asserted,'' and the ''economic and political significance'' of that assertion, provide a ''reason to hesitate before concluding that Congress'' meant to confer such authority.[46] In such cases, the agency must point to ''clear congressional authorization'' for the authority it claims.[47] As an initial matter, the POLB's comment fails to address with specificity why it believes the major questions doctrine applies at all. For example, the POLB's comment does not speak to the economic or political significance that would result from the approval of Rule 2305 into the SIP, much less allege that such impacts rise to a level that could implicate the major questions doctrine. Nor does the POLB explain how the EPA's approval of a *local* government rule in a SIP that meets the requirements of the CAA amounts to a transformative expansion of *Federal* regulatory authority. The absence of these factors refutes the idea that the major questions doctrine is implicated by this final rule. The interpretation of CAA section 110(a)(5) set forth in the proposed rule and again in this final rule does not broaden EPA's authority to any degree. Rather, the conclusion that Rule 2305 is an ISR program entails only that the SCAQMD may exercise its traditional police powers in this area.[48]

In any case, Congress has spoken clearly regarding this issue. As explained above, the text of section 110(a)(5), in light of statutory context, purpose, and history, indicates that Congress may approve State indirect source review programs that extend to existing sources. For the reasons set forth here and in the proposed rule, the EPA affirms the conclusion that the District is not precluded from regulating both existing and new warehouses in Rule 2305, and thus, this poses no impediment to approving the rule into the SIP.[49]

POLB Comment #6: The POLB asserts that SCAQMD Rule 2305's mitigation fee is an unlawful tax under State of California's Proposition 26. Proposition 26 amended the State Constitution to state that ''levy, charge, or exaction of any kind imposed by a local government'' is a tax except for certain exceptions. The POLB asserts that the mitigation fee in Rule 2305 does not fall under any of the exceptions and is intended to generate revenue rather than recoup costs associated with a regulatory program and is therefore unlawful unless the District secures voter approval.

EPA's Response to POLB Comment #6: As to the issue of whether Rule 2305's mitigation fee is an unlawful tax under State law, the EPA relied upon a legal analysis from the State Attorney General's Office [50] that was submitted as part of the SIP submission package and that concludes that the mitigation fee is not an unlawful tax under the California Constitution because, as a compliance option, the fee is not compulsory.[51] The legal analysis from the State Attorney General's Office specifically addresses the issues raised by Proposition 26.[52]

[43] *CTA* v. *SCAQMD,* Judgment, Dkt. 168, January 18, 2024.

[44] *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023), pp. 29–34.

[45] *West Virginia* v. *EPA,* 597 U.S. 697 (2022).

[46] Id., at 700, citing *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 159–160 (2000).

[47] Id., citing *Utility Air Regulatory Group* v. *EPA,* 573 U.S. 302, 324 (2014).

[48] See *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023), at 34 (''Even if this argument has not been waived, the major questions doctrine, as applied by the Supreme Court, applies to the balance of power between Congress and Federal agencies, not the balance of power between the Federal Government and the States. Moreover, the premise for the major questions doctrine suggests that Congress could not effectively preempt the States' traditional authority to regulate indirect sources of air pollution unless it used clear language to that effect.'').

[49] Our conclusion is further supported by the decision in the *CTA* v. *SCAQMD* case. See, *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023, p. 28 (''Nothing in the text, structure, or purpose of the indirect-source-review provision suggests that this phrase limits indirect source reviews to those based on new and modified indirect sources'').

[50] Letter dated May 6, 2021, from Robert Swanson, Deputy Attorney General, California Department of Justice, to Ellen Peter, Chief Counsel, CARB, included as an enclosure to a letter dated May 6, 2021, from Ellen M. Peter, to Wayne Nastri, Executive Officer, SCAQMD.

[51] See 88 FR 70616, 70621. The POLB notes that the decision in *National Association of Home Builders* v. *San Joaquin Valley Unified Air Pollution Control District,* 627 F.3d 730 (9th Cir. 2010) (''*NAHB* v. *SJVUAPCD*'') was decided before Proposition 26 amended the State Constitution to provide for voter approval of certain levies or charges as a tax except for certain enumerated exceptions. The EPA's evaluation of the issue of whether the mitigation fee represents an unlawful tax under State law does not rely on the decision in *NAHB* v. *SJVUAPCD* but relies instead on the legal analysis from the State Attorney General's Office.

[52] Letter dated May 6, 2021, from Robert Swanson, Deputy Attorney General, California

Continued

The POLB does not acknowledge the EPA's reliance on the legal analysis from the State Attorney General's Office or address the rationale presented therein for the conclusion that the mitigation fee is not an unlawful tax under State law.[53]

POLB Comment #7: The POLB asserts that sources controlled by SCAQMD Rule 2305 will be, and are, controlled by rules adopted by other agencies. To support this assertion, the POLB notes that emissions from heavy-duty trucks are currently heavily regulated by CARB. In addition, the POLB states that a newly-adopted CARB regulation, the Advanced Clean Fleets Regulation, will result in the turnover of trucks with combustion engines to trucks with zero emissions powertrains throughout the State. Trucks traveling between warehouses, ports, or intermodal railyards (such as drayage trucks) must be retired once they meet their statutory life beginning on January 1, 2025, and all drayage trucks must be ZE by 2035. Non-drayage trucks maybe covered by the High Priority Fleets portion of the regulation that results in the transition to ZE fleet by 2042. The Advanced Clean Fleet Regulation will result in a transformational shift in the on-road transportation sector towards zero emission by 2036.

EPA Response to POLB Comment #7: SCAQMD Rule 2305 applies to owners and operators of warehouses located in the SCAQMD with greater than 100,000 square feet of indoor floor space in a single building and who operate at least 50,000 square feet of the warehouse for warehousing activities. Thus, contrary to POLB's assertions, the sources controlled by SCAQMD Rule 2305, *i.e.,* warehouses, are not the sources controlled by CARB or district regulations referred to by the commenter. The EPA does recognize that CARB has adopted regulations that establish emission limits and other requirements related to control of emissions from new heavy-duty trucks, including CARB's Advanced Clean Fleets Regulation. In developing SCAQMD Rule 2305, the SCAQMD was also aware of CARB's regulatory efforts and designed Rule 2305 to enhance those efforts by accelerating emission reductions in the South Coast Air Basin that would otherwise occur over a longer period under CARB's rules. SCAQMD Rule 2305 focuses the reductions in areas disproportionately affected by emissions from indirect sources associated with warehouses. In addition, the SCAQMD adopted Rule 2305 to fulfill a commitment in the 2016 South Coast AQMP to assess and identify actions to further reduce emissions associated with emission sources operating in and out of warehouse distribution centers.

The EPA understands the POLB's comment to imply that SCAQMD Rule 2305 is unnecessary given the rules adopted by other agencies that will result, over time, in reductions in emissions from heavy-duty trucks. However, the SCAQMD adopted Rule 2305 to accelerate the emissions reductions within the District to focus the reductions in the areas most affected by indirect source emissions associated with warehouses and to fulfill a commitment made by the SCAQMD in connection with the 2016 South Coast AQMP. Finally, the EPA notes that CAA section 110(a)(5) provides States with specific authority to adopt ISR rules that by design provide another means to achieve greater emission reductions, notwithstanding that there may be other regulatory requirements applicable to the mobile sources that are associated with the regulated entities under such an ISR rule. In this instance, the SCAQMD has availed itself of this authority and made the policy choice to adopt and implement a warehouse ISR rule.

POLB Comment #8: The commenter states that the EPA's finding that Rule 2305 is not fully enforceable, without SIP credit, undermines the purpose of the rule to assist in meeting the State and Federal air quality standards for ozone and $PM_{2.5}$.

EPA Response to POLB Comment #8: The EPA disagrees that the determination that Rule 2305 is not fully enforceable due to certain deficiencies undermines the purpose of SCAQMD Rule 2305. The stated purpose of SCAQMD Rule 2305 is to reduce local and regional emissions of NO_X and $PM_{2.5}$, and to facilitate local and regional emission reductions associated with warehouses and the mobile sources attracted to warehouses, in order to assist in meeting State and Federal air quality standards for ozone and $PM_{2.5}$.[54] The issue of whether SCAQMD Rule 2305 qualifies at the present time for SIP credit through approval by EPA of a specific amount of emissions reductions attributable to the rule is different from whether SCAQMD Rule 2305 assists in meeting State ambient air quality standards and the NAAQS for ozone and $PM_{2.5}$.

As explained in the proposed rule, the EPA has concluded that SCAQMD Rule 2305 is generally enforceable for the purposes of CAA section 110(a)(2)(A), but with certain deficiencies that prevent the EPA from approving a specific amount of emissions reductions from the rule in any attainment or rate of progress/reasonable further progress demonstrations.[55] Although the EPA is not crediting Rule 2305 with achieving a specific amount of emissions reductions at this time, the EPA's evaluation of Rule 2305 indicates that the rule will in fact achieve additional emission reductions that are needed in the area for purposes of the ozone and $PM_{2.5}$ NAAQS.[56] The EPA noted that these additional reductions will incrementally contribute to the overall reductions needed to attain the NAAQS in the South Coast Air Basin and Coachella Valley air quality planning areas. The EPA also anticipates that SCAQMD will take action to resolve the identified deficiencies in Rule 2305 so that the EPA may provide SIP credit for it.

C. A4A Comments and EPA Responses

A4A Comment #1: Citing the proposed approval of Rule 2305 and a news release issued at the time the proposal was signed, A4A expresses concern that the EPA may have predetermined the outcome of its proposed action on SCAQMD Rule 2305 before considering public comments. A4A asserts that the EPA must follow due process and the law by meaningfully considering the comments it receives—including the arguments as to which Federal law preempts Rule 2305.

EPA Response to A4A Comment #1: The EPA disagrees that the news release cited by the commenter indicated that the Agency had predetermined the outcome of this rulemaking.[57] A proper reading of the entire statement by the Region IX Regional Administrator reveals only her recognition of the need for additional emissions reductions in the South Coast Air Basin and Coachella Valley, especially in communities with minority populations and low-income populations that continue to experience relatively higher concentrations of pollutants. The statement does not

Department of Justice, to Ellen Peter, Chief Counsel, CARB, included as an enclosure to a letter dated May 6, 2021 from Ellen M. Peter, to Wayne Nastri, Executive Officer, SCAQMD, pp. 12–14.

[53] As noted previously in this document, in the *CTA* v. *SCAQMD* case, the Court dismissed with prejudice CTA's and A4A's remaining State law claims that had been included in the complaints. The State law claims that were dismissed include claims that Rule 2305 mitigation fees constituted an unlawful tax under State law.

[54] SCAQMD Rule 2305(a).

[55] 88 FR 70616, 70623, 70625.

[56] 88 FR 70616, 70624.

[57] EPA Region IX, New Release titled ''EPA Proposes Approval of Groundbreaking Rule to Reduce Southern California Air Pollution Driven by Warehouse Operations,'' October 12, 2023.

suggest that the EPA would approve Rule 2305 regardless of the comments submitted in response to our proposed approval, and in a later paragraph, the news release notes that ''if finalized as proposed,'' Rule 2305 will become federally enforceable. The phrase ''if finalized as proposed'' conveys the possibility that the EPA may not finalize approval, as proposed, for example, in response to adverse comments the Agency receives on the proposal. Moreover, the EPA has fully evaluated the comments submitted on the proposed action and taken those into account, as evidenced in this final rule.

A4A Comment #2: The A4A conveys concern that the EPA has proposed to find that SCAQMD Rule 2305 is not preempted under the CAA, ADA and FAAAA notwithstanding an ongoing legal challenge to Rule 2305 grounded in preemption claims under those same statutes. The A4A is also concerned about the EPA's statements regarding possible actions the Agency might or might not take in the wake of a decision in the litigation finding Rule 2305 to be preempted but issued after final EPA approval of the rule.

EPA Response to A4A Comment #2: The EPA disagrees with the commenter's characterization of the Agency's evaluation of the SCAQMD's authority to adopt Rule 2305 and the Agency's evaluation of its own obligations to consider SCAQMD's authority in accordance with CAA section 110(a)(2)(E). The EPA fully considered these questions as explained in the proposal notice for this action. The commenter also took issue with the EPA's acknowledgement of the then ongoing litigation concerning claims of preemption and in particular with the EPA's statements that were the court to conclude that SCAQMD was preempted or otherwise precluded from adopting or implementing Rule 2305 the Agency would take that into account as appropriate. This did not indicate that the EPA was ''rendering a verdict without a record.'' This reflected a frank acknowledgement that a court decision contrary to the EPA's own analysis would of course require the agency to revisit that issue, as appropriate.

More importantly, as noted previously, since publication of the proposed rule, the U.S. District Court has addressed the challenges to the SCAQMD's legal authority to enforce Rule 2305, that were brought by CTA and A4A and that are grounded in preemption under the CAA, ADA, and the FAAAA, and dismissed on the merits the claims brought under those statutes.[58] Neither CTA nor A4A have filed a notice of appeal.[59] The EPA has taken the Court's decision into account in this final rule, and because we are taking final action after resolution of the legal challenges, the A4A's comment concerning actions that the EPA might or might not take if the decision were to be issued after final EPA action on Rule 2305 is moot.

A4A Comment #3: The A4A contends that the ADA preempts Rule 2305 because Rule 2305 impacts the price, route, or service of air carriers and that its ADA arguments apply equally to the FAAAA. To support these contentions, the A4A presents a review of relevant case law and its evaluation of Rule 2305 in light of the law and relevant case holdings. Further, the A4A objects to the EPA's preliminary conclusion to the contrary to be superficial and unsubstantiated.

EPA Response to A4A Comment #3: The EPA disagrees that the ADA or the FAAAA preempt Rule 2305. In the proposed rule, the EPA indicated that we do not consider the requirements under Rule 2305 as relating directly to the ''price, route, or service' '' of any air carrier or common carrier. But we recognized that an indirect effect on price is a foreseeable consequence of the additional costs borne by warehouse owners or operators to comply with the annual WPCO.[60] We preliminarily concluded that Rule 2305 is not preempted under either the ADA or F4A because any price effect is indirect and remote. Our preliminary conclusion in this regard was based on our review of the SCAQMD's Final Staff Report for Rule 2305, which was included in the SIP submission and includes the SCAQMD's responses to comments submitted during the District's rulemaking process that raise preemption objections to Rule 2305 under the ADA and FAAAA, and the filings in the *CTA* v. *SCAQMD* case. Moreover, we took into consideration that, in adopting Rule 2305, the District is acting under its delegated police powers to protect public health in a way that is explicitly authorized under CAA section 110(a)(5) and CAA section 116, and that acting in that capacity weighs against a finding of preemption under the ADA and FAAAA.

In the *CTA* v. *SCAQMD* case, the Court considered the same arguments related to ADA and FAAAA preemption that A4A includes in its comments on our proposed rule. After considering the arguments and related case law, the Court observed that Rule 2305 contains no express reference to the services, rates, or routes of air carriers and is thus not expressly preempted. The Court concluded that the A4A had not shown that the effect of Rule 2305 on the integrated air delivery system is more than ''tenuous, remote and peripheral.''[61]

To reach this conclusion, the Court considered the general applicability of Rule 2305. The court noted that Rule 2305 ''operate[s] one or more steps away from the moment at which the firm offers its customer a service for a particular price;''[62] does not affect any air carrier's routes because it treats all truck visits the same, no matter which course of travel the air carrier chooses for these trucks; does not bind an air carrier to offer particular services and does not control the prices, schedules, origins and destinations offered by air carriers to their customers beyond affecting the compliance costs of those air carriers.[63] Lastly, the Court noted that the ADA and FAAAA were enacted to ensure that airlines would be operated as private businesses rather than public utilities and that A4A had made no showing that Rule 2305 would materially alter this plan.[64]

For this final rule, we have reviewed the decision[65] of the District Court and find that it supports our preliminary conclusion set forth in the proposed rule that the SCAQMD is not prohibited from implementing Rule 2305 under the ADA or FAAAA, for the purposes of CAA section 110(a)(2)(E). Moreover, we are aware of no other legal challenge to Rule 2305 that might prevent SCAQMD from carrying out Rule 2305. Lastly, we note that we consulted with the U.S. Department of Transportation on our responses to comments related to ADA

[58] *CTA* v. *SCAQMD,* Judgment, Dkt. 168, January 18, 2024. In addition, the Court dismissed with prejudice CTA's and A4A's remaining State law claims that had been included in the complaints—see *CTA* v. *SCAQMD,* Order Re Joint Stipulation and Consent Motion to Dismiss with Prejudice (Dkt. 166), Dkt. 167, January 18, 2024.

[59] *CTA* v. *SCAQMD,* Defendants' Request for Publication of Order Denying Plaintiff and Plaintiff-Intervenor's Motions for Summary Judgment, Dkt. 169, March 5, 2024.

[60] 88 FR 70616, 70623.

[61] *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023, p. 33.

[62] Id., citing *S.C. Johnson & Son, Inc.* v. *Transp. Corp. of America, Inc.,* 697 F.3d 544, 558 (7th Cir. 2012).

[63] Id., p. 33.

[64] Id., p. 34.

[65] *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023), pp. 29–34.

and FAAAA preemption in this final rule. Therefore, the EPA affirms in this final rule the conclusion that the SCAQMD is not prohibited from implementing Rule 2305 under the ADA or FAAA and concludes that neither the ADA nor the FAAAA present an obstacle to the District in carrying out Rule 2305 for the purposes of CAA section 110(a)(2)(E).

A4A Comment #4: Citing statements by the District, A4A asserts that, in adopting Rule 2305, the SCAQMD is seeking to regulate diesel truck emissions.

EPA Response to A4A Comment #4: The EPA presumes A4A's comment is intended to imply that the District's true purpose in adopting Rule 2305 is to adopt and enforce vehicle standards that are preempted under CAA section 209(a). The EPA disagrees and finds that Rule 2305 is structured as a valid ISR rule that involves a facility-by-facility review and that takes a site-based approach to encourage and incentivize actions to reduce emissions associated with warehouse operations. Those actions may include reducing truck-related emissions, or emissions from other sources, that are associated with warehouse operations but does not constitute a mandate for purchase of ZE or NZE trucks (see EPA Response to POLB Comment #2).

The EPA further notes that States retain significant authority under the Clean Air Act to regulate emissions associated with mobile sources, notwithstanding the CAA Title II preemption provisions. In addition to the indirect source review programs described in section 110(a)(5), the Act also identifies various other ways in which States can address and reduce mobile source emissions, such as transportation control measures, vehicle inspection and maintenance programs, in-use regulations, and emission standards.[66]

A4A Comment #5: The A4A states that the EPA should reject SCAQMD's attempt to regulate vehicle emissions standards and decline to open the door to a patchwork of local restrictions that Congress intended to avoid in enacting the CAA's mobile source provisions.

EPA Response to A4A Comment #5: The EPA acknowledges that, in enacting section 209 of the CAA, Congress intended to avoid a patchwork of different State and local emissions standards for new vehicles and new vehicle engines that manufacturers would be required to meet. However, the EPA does not agree that, in Rule 2305, the SCAQMD has adopted or attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines or from any nonroad vehicles or engines preempted by CAA sections 209(a) and 209(e) because, among other things, Rule 2305 does not apply to vehicle or engine manufacturers but, rather, to warehouse owners and operators. Moreover, warehouse owners or operators may comply with Rule 2305 through a variety of measures, not just through purchase of a ZE or NZE vehicle (also see EPA Response to POLB Comment #2). Thus, we do not believe that approval by the EPA of Rule 2305 as part of the California SIP will open the door to the patchwork of local vehicle or engine standards that Congress intended to avoid in enacting the mobile source provisions of the CAA. Moreover, we believe that ISR programs described in CAA section 110(a)(5) represent an important tool for the States and local air districts to address air quality problems, that the CAA preemption provisions under CAA section 209 should be read together with the ISR provisions in CAA section 110, and that, read together, CAA section 209 does not necessarily preempt ISR programs that address emissions from mobile sources that are attracted to an indirect source.

By contrast, the EPA notes that States have considerable discretion to adopt and submit SIP provisions to the EPA for evaluation and, if approved, inclusion into that State's SIP. So long as the State has met all applicable statutory and regulatory requirements, the EPA will approve those provisions into the SIP in accordance with CAA section 110(k) and other applicable requirements. Among the approaches that a State has authority to elect to adopt is an ISR as contemplated in CAA section 110(a)(5). The mere fact that only some States may elect to adopt such a SIP provision, while others do not, also does not create an impermissible ''patchwork'' of requirements. It is a hallmark of the SIP program that States may follow different approaches to attaining and maintaining the NAAQS based on local facts and circumstances, so long as they meet applicable SIP requirements.

A4A Comment #6: The A4A contends that SCAQMD Rule 2305 creates incentives sufficiently burdensome as to be, in effect, a purchase mandate and is thus, under the reasoning of *Engine Mfrs. Ass'n* v. *SCAQMD,*[67] a mobile source emissions standard preempted under CAA section 209. The A4A acknowledges the decision in *NAHB* v. *SJVUAPCD* upholding an ISR rule against a CAA preemption challenge but distinguishes SCAQMD Rule 2305 from the SJVUAPCD ISR rule on three grounds. First, A4A cites language from the *NAHB* decision that ''[a]n emissions limit calculated by reference to a fleet of engines or vehicles is as much a 'standard' as an emissions limit calculated by reference to an individual engine or vehicle,'' and argues that Rule 2305, as a ''fleet'' standard rather than an ISR rule, is preempted under the CAA. Second, A4A asserts that Rule 2305 is distinguishable because it mandates ZEV equipment or imposes penalties if ZEV equipment is not used. Third, A4A asserts that Rule 2305 is distinguishable because it does not allow regulated entities to retrofit existing equipment or switch fuels to achieve compliance, based upon which A4A further asserts ''the only way to avoid punitive mitigation fees is to purchase ZEV/NZE vehicles.''

EPA Response to A4A Comment #6: In the EPA's proposed rule, we considered the issue of whether Rule 2305, while structured as an ISR program, represents a de facto purchase mandate for ZE or NZE trucks and is thus preempted under CAA section 209(a) under the principles of the *EMA* case.[68] As explained in the proposed rule, we found that Rule 2305 lacks the indicia of a de facto regulation of either motor vehicles or nonroad vehicles or engines.[69] In support of this preliminary finding, we noted the various options available (WAIRE Menu, Custom WAIRE Plan, or Mitigation Fee) to warehouse operators that do not involve acquisition of, or contracting for, ZE or NZE trucks to earn WAIRE Points. The EPA acknowledged in the proposed rule information from the SCAQMD's final socioeconomic impact assessment for Rule 2305 that ZE/NZE non-acquisition (or contracting) scenarios are generally 4 to 5 times more costly (in terms of average annual dollars per square foot) than the ZE/NZE acquisition (or contracting) scenarios so as to incentivize acquisition and use of ZE/NZE trucks over the non-acquisition options.[70] However, we also noted that the scenarios in the socioeconomic impact assessment were developed to identify the widest range of possible costs assuming that warehouse owners and operators would only comply with a single scenario approach from 2022

[66] See, *e.g.* CAA sections 108(f), 177, 182, 209.

[67] *Engine Manufacturers Association* v. *South Coast Air Quality Management District,* 541 U.S. 246, 253–55 (2004) (''*EMA*'').

[68] 88 FR 70616, 70622–70623.

[69] 88 FR 70616, 70623.

[70] 88 FR 70616, 70623, footnote #55.

through 2031. As a practical matter, the EPA expects warehouse operators will select multiple points-earning actions or investments along with mitigation fees to meet the annual compliance obligation. Recent data on compliance with Rule 2305 bears out this expectation. For Year 2023, for example, warehouse operators reported WAIRE Points primarily from hostler usage (53%), solar panel installation and usage (15%), and NZE truck usage (14%). Mitigation fee point purchases represented approximately 2% of the total reported WAIRE Points for 2023.[71] Moreover, these selections may change over the years in light of the ever-changing circumstances of individual businesses and the composition of vehicle fleets. As such, we find that Rule 2305 is not a de facto purchase mandate and is thus not preempted under CAA section 209(a) consistent with the *EMA* case.

As part of our evaluation of this issue, we also compared Rule 2305 to SJVUAPCD Rule 9510, the ISR rule at issue in the *NAHB* v. *SJVUAPCD* case (*i.e.,* SJVUAPCD Rule 9510), and preliminarily found that Rule 2305 is similar in relevant respects to the ISR program the Court determined in *NAHB* was not preempted.

Most critically, we noted that Rule 2305 regulates at the level of the indirect source, not at the level of mobile sources the indirect source may attract. In Rule 2305, the annual compliance obligation for any particular warehouse operator reflects the number and type of truck trips visiting the warehouse. It is reasonable to assume that other non-truck mobile sources attracted to or associated with the warehouse would be proportional to the number of truck trips. Therefore, the use of trucks trips in Rule 2305 as a proxy for all attracted mobile sources means that, contrary to the A4A's contention otherwise, Rule 2305 is premised on a facility-by-facility review of all ''attracted'' sources. This site-based approach to regulating emissions is precisely what allows Rule 2305 to avoid preemption under section 209(a) just as SJVUAPCD Rule 9510 avoids preemption under CAA section 209(e)(2).

A4A claims that the annual compliance obligation under Rule 2305 (the WATT) represents a ''fleet'' standard under the CAA. However, the WATT is a facility-based metric in that it reflects truck visits to or from a warehouse and is a proxy for all mobile source emissions associated with warehouse operations. The truck visits to or from a warehouse do not represent the type of fleet that is implicated by CAA section 209. Fleet-based standards that may be subject to CAA section 209 preemption relate to vehicle manufacturers, owners, or purchasers, not to operators or owners of facilities to which vehicles are attracted. The same was true for the SJVUAPCD rule at issue in *NAHB* v. *SJVUAPCD.*[72]

With respect to A4A's assertion that Rule 2305 is distinguishable from Rule 9510 because it mandates ZEV equipment or imposes penalties if ZEV equipment is not used, as further explained above, Rule 2305 does not mandate ZEV equipment or impose penalties if ZEV equipment is not used. Rather, Rule 2305 provides warehouse operators (and owners who opt in) various options (WAIRE Menu, Custom WAIRE Plan) for compliance that do not involve acquisition of, or contracting for, ZE or NZE trucks or paying the mitigation fee.

We also disagree with A4A's assertion that Rule 2305 does not allow regulated entities to retrofit existing equipment or switch fuels to achieve compliance. These specific types of actions could be used to earn WAIRE points under a Custom WAIRE Plan under Rule 2305 if they meet the requirements for such actions under SCAQMD Rule 2305(d)(4). These compliance options, as well as others described herein, refute A4A's contention that the only options for compliance are payment of mitigation fees or purchase of ZEV/NZV vehicles.

Lastly, we note that the Court in *CTA* v. *SCAQMD* considered but rejected arguments that Rule 2305 is preempted because it relates to the control of emissions from vehicles and engines and is a ''standard'' because its purpose and effect is to mandate the purchase of ZE and NZE trucks.[73] The Court also determined that neither the purpose nor the effect of Rule 2305 is to compel the purchase of ZE or NZE.[74] As such, we find the Court's decision as supportive of our preliminary conclusion in the proposed rule that, in Rule 2305, the SCAQMD has not adopted or attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines preempted by CAA section 209(a). We affirm that conclusion in this final action.

A4A Comment #7: The A4A asserts that the CAA only permits the EPA to approve into SIPs ISR rules that apply to new or modified sources, not existing sources. In support of this assertion, the A4A contends, based on statements by the EPA published in 1973, that the EPA has historically interpreted ISR rules to refer to new or modified sources, rather than existing sources. The A4A also asserts that State law (*i.e.* California Health & Safety Code section 40440) limits the SCAQMD's authority with respect to ISR rules to new or modified sources, and that State law preempts Rule 2305 because it constitutes a land use restriction. Lastly, the A4A asserts that CAA section 110 limits the EPA's authority to approve ISRs only to the extent they regulate new or modified, and not existing, facilities.

EPA Response to A4A Comment #7: First, we disagree that ISR programs as described in CAA section 110(a)(5) apply to new or modified sources exclusively and not to existing sources. Please see EPA Response to POLB Comment #3. Moreover, the statements made by the EPA in 1973 to which the A4A refers, come from a proposed rule in which the EPA proposes certain amendments to the EPA's regulations establishing SIP content requirements that ''would require, with respect not only to 'stationary sources,' in the traditional sense, but also certain other types of facilities, an assessment of both direct and indirect effects on air quality prior to their construction and

[71] See SCAQMD, Hybrid Mobile Source Committee Meeting, Agenda, March 15, 2024, p. 18.

[72] See *NAHB* v. *SJVUAPCD,* 627 F.3d 730 at 740 (9th Cir. 2010) (''We agree that Rule 9510 escapes preemption not merely because Rule 9510 affects groups of construction equipment rather than individual engines or vehicles. An emissions limit calculated by reference to a fleet of engines or vehicles is as much a ''standard'' as an emissions limit calculated by reference to an individual engine or vehicle. Rather, Rule 9510 escapes preemption because its regulation of construction equipment is indirect. Rule 9510 does not measure emissions by fleets or groups of vehicles; it measures emissions on a ''facility-by-facility'' basis. 42 U.S.C. 7410(a)(5)(D). Its unit of measurement is the indirect source, not the fleet. It regulates development sites directly, but as the term ''indirect source'' implies, it regulates mobile emissions only indirectly. For that reason, the fleet-based regulations are not analogous to Rule 9510.'')

[73] *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023, p. 24.

[74] As to effects, the court notes that the District presented evidence that warehouses would not have to shutter their operations or relocate unless compliance costs exceeded approximately $1.50 per square foot per year, leading the court to observe: ''That none of the models predicted compliance costs exceeding that amount, suggests that the effects of the Rule were not sufficient to compel warehouse owners to purchase ZE or NZE trucks. Also, for a typical, 500,000 square foot warehouse, the compliance costs would be 0.5% on the low end to 3.2% on the high end of the warehouse's existing annual operating costs. Dkt. 107–3 ¶ 135. These amounts are quite small, and do not show that the District has provided warehouse operators with a demand to purchase ZE or NZE trucks that cannot practically be refused.'' Id., p. 26.

modification and a determination as to whether there would be interference with maintenance of any national standard.'' [75] In other words, the statements by the EPA in 1973 describe amendments that the Agency was proposing to extend certain SIP requirements with respect to new source review to certain indirect sources, but they do not speak to the issue of State authority to regulate existing indirect sources nor do they establish a long-standing interpretation by the EPA that ISR programs refer exclusively to new or modified indirect sources. Further, the 1973 statements preceded Congress's enactment of the indirect source provisions in section 110(a)(5) in 1977. The commenter fails to explain with specificity why a prior agency statement on a different topic governs the interpretation of a subsequently enacted statute.

Second, the EPA disagrees that SCAQMD Rule 2305 is unenforceable under State law. In the EPA's proposed rule, we considered the question of the SCAQMD's authority to adopt Rule 2305 and preliminarily concluded that SCAQMD has the authority to adopt the rule under California Health & Safety Code section 40440. This authorizes the SCAQMD to provide for indirect source controls in those areas of the District in which there are high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin.

In its Final Staff Report, the SCAQMD presents information concerning high-level, localized concentrations of air pollutants in the vicinities of warehouses.[76] Such information provides support for the SCAQMD's authority to adopt Rule 2305 under California Health & Safety Code section 40440. The A4A cites the same section of California code as disallowing Rule 2305, but the A4A focuses solely on the second part of the authority granted in section 40440, which refers to new sources, whereas the statute provides two different bases for the authority, either of which is sufficient, and the EPA has simply relied on the first one, which does not distinguish between new or existing sources.

Third, as to the A4A's claim that SCAQMD Rule 2305 constitutes an unlawful land use restriction under State law, we note that the SCAQMD responded to similar comments made during the District's rulemaking process. In its response to comments, the SCAQMD explained that Rule 2305 ''does nothing to interfere with local governments' ability allow, disallow, or control the use of land for warehouse purposes or dictate where warehouses may be built. Like every other air district rule, it merely limits emissions from particular sources—here, indirect sources.'' [77] The A4A points to the truck-trip-based compliance obligation and the options set forth in Rule 2305 (*e.g.,* installation of changing equipment, solar panel systems, and use of such systems) to meet the obligation as ostensible evidence of the land use regulation character of Rule 2305. However, the A4A does not explain how the compliance obligation or the options for compliance set forth in the rule could interfere with local governments' ability to control land use for warehouse purposes or dictate where warehouses may be built.

Fourth, in the proposed rule, the EPA preliminarily concluded that the District's decision to regulate both existing and new warehouses in Rule 2305 is consistent with CAA section 110(a)(5). As explained in the proposal, we considered this question in light of the definitions of the term ''indirect source review program'' in CAA section 110(a)(5)(D) and ''indirect source'' in CAA section 110(a)(5)(C) and in light of CAA section 116, which explicitly provides that States retain authority to regulate more stringently in SIP provisions than otherwise required by Federal law, except where preempted from doing so.[78] The A4A disagrees with EPA's interpretation but did not provide a persuasive explanation based on the statutory language.

Lastly, we note that the Court in *CTA* v. *SCAQMD* also considered this issue and found that ''Nothing in the text, structure, or purpose of the indirect-source-review provision suggests that this phrase limits indirect source reviews to those based on new and modified indirect sources.'' [79] The EPA has reached this same conclusion based on the text, structure, and purpose of CAA section 110(a)(5), and thus the court decision confirms the agency's own view.

In this final rule, for the reasons given in our proposed rule and in light of the Court's decision, the EPA affirms our conclusion that the District's choice to regulate both existing and new warehouses in Rule 2305 is consistent with CAA section 110(a)(5).

A4A Comment #8: Citing CAA sections 110(a)(5)(B) and 110(c), the A4A asserts that the CAA authorizes only the EPA, and not the States, to adopt airport-related ISRs. As such, the A4A contends that Rule 2305 cannot regulate airport-based warehouses. Further, because the preemption principles of the ADA extend to an air carrier's trucking operations, A4A contends that the prohibition on States' authority to adopt airport-related ISRs extends to all airport-related warehouses.

EPA Response to A4A Comment #8: CAA section 110(a)(5)(B) narrows the authority that the EPA would otherwise have to promulgate ISR programs as part of a Federal Implementation Plan (FIP) under CAA section 110(c) to a specific set of indirect sources, namely ''only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.'' The use of the word ''only'' in CAA section 110(a)(5)(B) refers to the types of indirect sources over which the EPA retains authority when promulgating a FIP and simply does not address what sources States may elect to regulate in an ISR. CAA section 110(a)(5)(B) does not speak to any limits on States in developing ISRs and thus it does not present an obstacle to the SCAQMD's legal authority to carry out Rule 2305 throughout the District or to the EPA's approval of the rule as consistent with the requirements of CAA section 110(a)(2)(E). Lastly, because the commenter's premise is not supported by the CAA, the commenter's extension of the premise to airport-related warehouses (*i.e.,* those physically located off-airport) is also not supported.

D. BAR Logistics Comments and EPA Responses

BAR Logistics Comment #1: BAR Logistics contends that enforcement of Rule 2305 is premature at this point in time because of the relative unavailability of Class 8 electric trucks.

EPA Response to BAR Logistics Comment #1: In reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the minimum criteria set in the CAA or any applicable EPA regulations. Thus, considerations such as whether a District rule may be economically or technologically challenging cannot form the basis for

[75] 38 FR 9599 (April 18, 1973).

[76] SCAQMD, Final Staff Report, pp. 16–17.

[77] SCAQMD, Final Staff Report, Supplement to Agenda Item #27, Board Meeting of May 7, 2021, Supplement Number Two-Response to Letter from Airlines for America, dated May 4, 2021 (Attachment A).

[78] 88 FR 70616, 70622.

[79] *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023, p. 28.

EPA disapproval of a rule submitted by a State as part of a SIP.[80]

The EPA acknowledges the challenges for warehouse operators in meeting the requirements of Rule 2305. The EPA notes that warehouse operators have three basic options, or any combination of these options, through which to earn or obtain points sufficient to meet their WPCO and that all these options provide for points to be earned toward the WPCO from actions that do not involve ZE/NZE trucks. With respect to ZE/NZE trucks, in response to comments on proposed Rule 2305, the SCAQMD indicated that there are commercially available, or expected to be available, options to acquire or use ZE/NZE trucks within the first compliance year.[81] At the time of adoption of Rule 2305, the SCAQMD had funded over 1,200 NZE trucks that are currently operating in the commercial sector.[82] The SCAQMD also noted that NZE engines are available in two sizes, 8.9 and 11.9 liters, and are offered by major truck manufactures in different truck classes including Class 8 long haul and/or drayage trucks. The ZE truck market is still growing with many major manufacturers announcing plans for commercialization of battery-electric and hydrogen fuel cell electric trucks.[83] SCAQMD further noted that there are expected to be 62 models of medium duty (*e.g.,* Class 4–7) ZE trucks commercially available during 2021.[84]

BAR Logistics Comment #2: As a third-party logistics (3PL) warehouse operator, BAR Logistics asserts that the company owns no trucks, and, thus, mitigation options under SCAQMD Rule 2305 are extremely limited. BAR Logistics further contends that, as to 3PLs, the mitigation fee functions as a tax and is unfairly imposed on 3PLs because companies with much greater resources and with trucks that transport goods to and from the warehouse are not subject to the requirements of Rule 2305. BAR Logistics states that the tax 3PLs will pay will go to larger companies from the WAIRE program, resulting in a ''regressive tax.''

EPA Response to BAR Logistics Comment #2: As noted in EPA Response to BAR Logistics Comment #1, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the minimum criteria set in the CAA or any applicable EPA regulations. Thus, considerations such as whether a District rule may be economically or technologically challenging cannot form the basis for EPA disapproval of a rule submitted by a State as part of a SIP.[85]

The EPA acknowledges the challenges for warehouse operators in meeting the requirements of Rule 2305 but notes that warehouse operators have options, as explained above, to earn or obtain WAIRE points to meet their WPCO from actions that do not involve ZE/NZE trucks.

In addition, the EPA notes that, based on the SCAQMD's first Annual Report for the WAIRE Program, warehouse operators intend to meet their obligations under Rule 2305 in various ways with only limited reliance on the mitigation fee option. As described in the proposed rule, the first Annual Report suggests that warehouse operators expect to meet their WPCOs, at least in the early years of the program, primarily through ZE hostler usage, (*i.e.,* yard tractors that move trailers and containers around warehouse facilities; approximately 40% of the anticipated WAIRE points based on the Initial Site Information Report (ISIRs) received), NZE Class 8 Truck Visits (approximately 27%), and ZE hostler acquisition (approximately 8%).[86] The submitted ISIRs also suggest that, in addition to taking actions from the WAIRE Menu, warehouse operators anticipate earning about 5,500 points through mitigation fees, representing about 3% of total points earned, of about $5.5 million.[87] More recent data shows that, for Year 2023, warehouse operators reported WAIRE Points primarily from hostler usage (53%), solar panel installation and usage (15%), and NZE truck usage (14%).[88]

E. CTA Comments and EPA Responses

CTA Comment #1: The CTA asserts that the EPA should defer action on Rule 2305 until Federal court examinations of SCAQMD legal authority are complete and resolved.

EPA Response to CTA Comment #1: Please see EPA Response to POLB Comment #1.

CTA Comment #2: The CTA contends that Rule 2305 is preempted by CAA section 209 because it establishes de facto emission standards for trucks because it is structured so as to make the acquisition of trucks that meet only certain emissions standards, and their associated infrastructure that is necessitated by truck acquisition, the only economically reasonable and the principal method of compliance.

EPA Response to CTA Comment #2: The EPA disagrees that Rule 2305 establishes de facto emissions standards for trucks. Please see EPA Response to POLB Comment #2 and EPA Response to A4A Comment #6.

CTA Comment #3: The CTA contends that Rule 2305 is preempted by the ADA and the FAAAA because it will mandate changes to prices, routes, and services. The CTA states that the EPA has no basis or expertise upon which to rely with regard to either the interpretation or application of the ADA or the FAAAA and that the best source of definitive interpretation of the application of these Federal statutes is a Federal court. The CTA also contends that the EPA should have published a specific supplemental notice seeking additional public input on these specific questions for which it has no legal expertise.

EPA Response to CTA Comment #3: The EPA disagrees that Rule 2305 is preempted by the ADA or the FAAAA. Please see the EPA Responses to POLB Comment #4 and A4A Comment #3. We also note that we consulted with the U.S. Department of Transportation on our responses to comments related to ADA and FAAAA preemption in this final rule.

In our proposed rule, the EPA noted that we did not consider the requirements under Rule 2305 as relating directly to the price, route, or service of any air carrier or common carrier but recognized that an indirect effect on price is a foreseeable consequence of the additional costs borne by warehouse owners or operators to comply with the annual WPCO.[89] Since publication of the proposed rule, the Court in the *CTA* v. *SCAQMD* case has concluded that Rule 2305 is not preempted under the ADA or the FAAAA, in part, based on the Court's finding that the challengers to Rule 2305 had failed to show that the effect of the Rule 2305 on price, route or service of any air carrier ''is more than tenuous, remote and peripheral.'' [90] In light of the

[80] *Union Electric Company* v. *EPA;* 427 U.S. 246, 265 (1976).

[81] SCAQMD, Final Staff Report, ''Proposed Rule 2305—Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316—Fees for Rule 2305'', May 2021, ''SCAQMD Final Staff Report'', Appendix F, Master Response 2d.

[82] Id.

[83] Id.

[84] Id.

[85] *Union Electric Company* v. *EPA;* 427 U.S. 246, 265 (1976).

[86] 88 FR 70616, 70619, citing information from SCAQMD, Annual Report for the Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program, January 2023, p. 15.

[87] Id.

[88] SCAQMD, Hybrid Mobile Source Committee Meeting, Agenda, March 15, 2024, p. 18.

[89] 88 FR 70616, 70623.

[90] *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint

Continued

Court's decision, the EPA affirms our preliminary conclusion that SCAQMD Rule 2305 is not preempted by the ADA or the FAAAA. Therefore, the SCAQMD is not prohibited under those statutes from carrying out Rule 2305, consistent with the SIP requirements under CAA section 110(a)(2)(E). Also, in light of the Court's decision, the EPA considers to be moot the CTA's suggestion to publish a supplemental notice to seek additional public input on whether Rule 2305 is preempted by the ADA or FAAAA.

CTA Comment #4: The CTA asserts that Rule 2305 is unenforceable under State law, rendering SIP inclusion fatal. The CTA claims that Rule 2305 imposes an unlawful tax under State law. The CTA objects to the EPA's reliance on legal analysis provided by the State Attorney General's office and asserts that such reliance is not a sufficient basis for SIP approval. The CTA also contends that SCAQMD has adopted a rule for which it does not have authority under State law [91] because the rule applies to *new and existing* sources whereas the authority of SCAQMD to adopt ISR rules is limited to areas that have high-level, localized concentrations of pollutants or with respect to any *new* source that will have a significant effect on air quality in the South Coast Air Basin.

EPA Response to CTA Comment #4: The EPA disagrees that SCAQMD Rule 2305 is unenforceable under State law. In the EPA's proposed rule, we considered the question of the SCAQMD's authority to adopt Rule 2305 and preliminarily concluded that SCAQMD has the authority to adopt the rule under California Health & Safety Code section 40440.[92] This section authorizes the SCAQMD to provide for indirect source controls in those areas of the South Coast District that have high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin.

In its Final Staff Report, the SCAQMD presents information concerning high-level, localized concentrations of air pollutants in the vicinities of warehouses.[93] Such information provides support for the SCAQMD's authority to adopt Rule 2305 under California Health & Safety Code section 40440. The CTA cites the same section of California code as disallowing Rule 2305. The CTA focuses solely on the second part of the authority granted in section 40440, which refers to new sources, whereas the statute provides two different bases for the authority, either of which is sufficient, and the EPA has simply relied on the first one, which does not distinguish between new or existing sources.

In the EPA's proposed rule, with respect to the issue of whether the mitigation fee in Rule 2305 constitutes an unlawful tax under State law, we acknowledged comments to that effect that were submitted in the District's rulemaking process but preliminarily found the mitigation fee under Rule 2305 to be lawful under State law on the basis of legal analysis provided by the State Attorney General's Office.[94] In the context of the EPA's actions on SIPs and SIP revisions, the EPA's reliance on interpretations of State law from a State's attorney general is generally appropriate given the role of a State Attorney General as the chief legal officer of the State. The EPA generally defers to interpretations of State law from State attorney generals in the absence of clear error where questions of State law arise in the context of SIP actions. We find no such error in the legal analysis provided by the State Attorney General's Office in this instance.

The CTA has pointed out no clear error in the legal analysis provided by the State Attorney General's Office but suggests that the EPA should view the analysis differently because the analysis was provided as advocacy and justification for the adoption of Rule 2305 and because CARB and the State of California have joined the *CTA* v. *SCAQMD* case as intervenors for the SCAQMD. However, the Attorney General's Office prepared the legal analysis at the request of CARB on behalf of the SCAQMD, which had received a variety of questions concerning the legal authority of the SCAQMD to promulgate Rule 2305.[95] Given these circumstances, the legal analysis appears to us to be nothing more than a routine and appropriate response by the State Attorney General's Office to questions from State agencies concerning their authority under State law. The EPA also does not find CARB's and the State of California's subsequent participation in the *CTA* v. *SCAQMD* case as intervenors to defend the constitutionality of Rule 2305 to be relevant to our evaluation of Rule 2305 as a revision to the California SIP. As such, the EPA finds no basis to question the legal analysis prepared by the State Attorney General's Office. The EPA reaffirms our reliance on the State's analysis as the basis for our conclusion that the mitigation fee in Rule 2305 does not constitute an unlawful tax under State law. In addition, the SCAQMD is not prohibited under State law from carrying out Rule 2305, including its mitigation fee option, consistent with the SIP requirements under CAA section 110(a)(2)(E).[96]

CTA Comment #5: The CTA contends that the EPA does not consistently and clearly define ''Indirect Source Rule'' applications. To support this contention, the CTA notes SCAQMD Rule 2305 is not a legitimate ISR rule if one relies on the ISR rule at issue in *National Association of Home Builders* v. *San Joaquin Valley Unified Air Pollution Control District (NAHB* v. *SJVUAPCD).*[97] Among the differences between the two rules, the CTA asserts that the ISR rule at issue in *NAHB* v. *SJVUAPCD* applies only to new sources of emissions, rather than new and existing sources of emissions, and is concerned with the development site as a whole, rather than being engine- or vehicle-based. Also, the CTA finds inconsistencies between the approach to reducing emissions under SCAQMD Rule 2305 and the description of ISR rules by CARB (that is cited by the EPA in a separate rulemaking) as rules that ''cap'' emissions at an entire facility or otherwise seek to reduce emissions below a certain facility-wide level.

EPA Response to CTA Comment #5: The EPA approved SJVUAPCD Rule

for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023, p. 33.

[91] The CTA cites California Health & Safety Code section 40440.

[92] In relevant part, California Health & Safety Code section 40440 provides: ''(a) The south coast district board shall adopt rules and regulations that carry out the plan and are not in conflict with State law and Federal laws and rules and regulations. Upon adoption and approval of subsequent revisions of the plan, these rules and regulations shall be amended, if necessary, to conform to the plan. (b) The rules and regulations adopted pursuant to subdivision (a) shall do all of the following: . . . (3) Consistent with Section 40414, provide for indirect source controls in those areas of the south coast district in which there are high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin.''

[93] SCAQMD, Final Staff Report, pp. 16–17.

[94] Letter dated May 6, 2021 from Robert Swanson, Deputy Attorney General, California Department of Justice, to Ellen Peter, Chief Counsel, CARB, included as an enclosure to a letter dated May 6, 2021 from Ellen M. Peter, to Wayne Nastri, Executive Officer, SCAQMD.

[95] Id.

[96] Also, as noted previously in this document, in the *CTA* v. *SCAQMD* case, the Court dismissed with prejudice CTA's and A4A's remaining State law claims that had been included in the complaints. The State law claims that were dismissed include claims that Rule 2305 mitigation fees constituted an unlawful tax under State law.

[97] *National Association of Home Builders* v. *San Joaquin Valley Unified Air Pollution Control District,* 627 F.3d 730 (9th Cir. 2010) (''*NAHB* v. *SJVUAPCD*'').

9510 (''Indirect Source Review (ISR)''), *i.e.,* the ISR rule at issue in *NAHB* v. *SJVUAPCD,* in part, by recognizing the rule as a type of rule that any State may include in its SIP but that the EPA may not require as a condition of approval of a SIP, under CAA section 110(a)(5).[98] In so doing, however, we did not intend thereby to define the scope of ISR rules in general but rather to take action on the specific rule that was submitted to the Agency. Likewise, in our action on SCAQMD Rule 2305, the EPA finds that the rule is the type of rule that a State may include in its SIP under CAA section 110(a)(5), but, in doing so, we do not intend to define the scope of ISR rules in general but only to take action on the specific rule submitted to us.

The EPA acknowledges differences between SJVUAPCD Rule 9510 and SCAQMD Rule 2305, but, contrary to the CTA's assertion, both apply to sites or facilities, rather than to vehicles or engines. In the case of SJVUAPCD Rule 9510, the rule applies to larger development projects (*e.g.,* 50 residential units or 2,000 square feet of commercial space at full buildout), and in the case of SCAQMD Rule 2305, the rule applies to larger warehouses (*i.e.,* greater than 100,000 square feet of indoor floor space in a single building). Also, the issue of whether ISR rules can apply to existing as well as new or modified facilities was not raised in our action on SJVUAPCD Rule 9510. The EPA has explained, in our proposed rule, why we conclude that the District is not precluded, consistent with CAA section 110(a)(5), from regulating both existing and new warehouses in Rule 2305.[99] As such, our actions approving SJVUAPCD Rule 9510 and, in this document, approving SCAQMD Rule 2305 are not inconsistent but simply reflect two different approaches to ISR programs that States may adopt, but are not required to adopt, as part of their SIPs under CAA section 110(a)(5).

With respect to the purported inconsistency between SCAQMD Rule 2305 and CARB's description of ISR rules that is cited by the EPA in the Agency's authorization of CARB's amended Ocean-Going Vessels At-Berth Regulation,[100] we note first that establishing an emissions cap may be a feature of an ISR rule, but it is not a required feature. Other than by defining the terms ''indirect source'' and ''indirect source review program'' and by distinguishing an ISR program from a ''transportation control measure,'' CAA section 110(a)(5) does not prescribe any particular approach to ISR programs. Establishing a cap for emissions at an entire facility or reducing emissions below a certain facility-wide level are only two possible approaches in an ISR rule, but other approaches are possible as well. In the case of SCAQMD Rule 2305, the rule does not establish an emissions cap for warehouses and does not require emissions reductions below a certain level. Rather, Rule 2305 requires warehouse operators to earn points to meet an annual obligation based on a proxy for all mobile source emissions associated with warehouse operations, through completion of emissions-reducing actions or investments listed in Rule 2305, through such actions approved as part of a Custom WAIRE plan, or through paying the mitigation fee, approaches which are also consistent with CAA section 110(a)(5).[101] What these approaches have in common is that they are examples of the types of facility-by-facility reviews of indirect sources to which CAA section 110(a)(5) refers.

F. Center for Community Action and Environmental Justice (CCAEJ) Comments and EPA Responses

CCAEJ Comment #1: The CCAEJ expresses concerns that the SCAQMD will not disclose information necessary for the public to enforce SCAQMD Rule 2305. The CCAEJ also expresses concerns that the SCAQMD has not developed a web portal for public access to that information, may withhold important compliance information as business confidential information, and may aggregate important compliance data. The CCAEJ notes SCAQMD's disclosure of a high (55 percent) noncompliance rate with Rule 2305, which, in CCAEJ's view, demonstrates the urgency of the EPA ensuring that the public can enforce Rule 2305. The CCAEJ requests that the EPA conditionally approve, or partially approve and partially disapprove (or take other appropriate action under CAA section 110(k)), SCAQMD Rule 2305 to ensure that the SCAQMD amends Rule 2305 to address public disclosure of information to ensure that the public can enforce the rule. The CCAEJ also states that the EPA should require the SCAQMD to submit the program and parameters of the public's access to WAIRE program compliance data for inclusion as part of the SIP.

EPA Response to CCAEJ Comment #1: In EPA's proposed rule, the EPA preliminarily concluded that Rule 2305 includes recordkeeping and reporting requirements that are sufficient to ensure compliance with the applicable requirements. In support of this preliminary conclusion, the EPA incorrectly referred to two sections of the California Code of Regulations (13 CCR 2023.8 and 13 CCR 2023.9). The correct references are to SCAQMD Rule 2305(d)(7)(A) (Warehouse Operations Notification or WON), 2305(d)(7)(B) (Initial Site Information Report), and 2305(d)(7)(C) (Annual WAIRE Report). Warehouse facility owners must submit WONs to the SCAQMD within certain time periods prescribed in Rule 2305. The obligation to submit Initial Site Information Reports to the SCAQMD falls on warehouse operators and the obligation to submit Annual WAIRE Reports falls on warehouse operators who are required to earn WAIRE Points, or warehouse facility, or landowners who earn WAIRE Points as applicable. Submission of these records, as stated by the SCAQMD, is through the WAIRE POP Portal.

In comments submitted in response to EPA's proposed rule, the SCAQMD indicates that it has created a separate web page to provide information on the WAIRE Program to the public. The SCAQMD also indicates that it is evaluating a proposal to include additional WAIRE Program data, including aggregated information about compliance obligations and completed compliance actions, in its Facility Information Detail (''FIND'') tool. The EPA supports the SCAQMD's efforts to provide online access to the public of rule compliance information, but providing such access is not a CAA requirement. The rule compliance information that SCAQMD provides online to the public will serve to supplement and enhance the information available to the public through more traditional means such as requests made to the SCAQMD under the California Public Records Act.[102]

The EPA has no information at the present time that the SCAQMD's review of public information requests under the California Public Records Act will substantially impair enforceability of the rule by the public, and the EPA

[98] The EPA approved SJVUAPCD Rule 9510 at 76 FR 26609 (May 9, 2011), and again as amended at 86 FR 33542 (June 25, 2021).

[99] 88 FR 70616, 70622.

[100] 88 FR 72461 (October 20, 2023).

[101] Also, see the EPA's response to comments on CARB's request for authorization for CARB's Ocean-Going Vessels At-Berth Regulation at 88 FR 72461, at 72474–72475 (October 20, 2023) (Quoting CARB: ''Purpose of the Regulation is to achieve emissions reductions from each vessel visit. . . . While the Regulation does regulate ports and terminals, it does so only because regulating those entities has proven essential to ensuring each vessel visit is able to use an approved emission-reducing control technology.'')

[102] *See* Ca. Gov't Code sections 7920.000–7931.000.

declines to speculate as to the outcome of future responses by SCAQMD to public information requests related to Rule 2305. Accordingly, the EPA believes that citizens can obtain the information necessary to determine compliance by individual facilities with SCAQMD Rule 2305 with or without online access to rule compliance information.

As to the high noncompliance rate reported last year by the SCAQMD, the EPA is aware of this circumstance and agree with the CCAEJ on the importance of enforceability of Rule 2305 by the public, but the EPA also notes the specific actions SCAQMD has taken to improve compliance and to enforce the rule.[103]

Lastly, because the EPA concludes that Rule 2305 includes recordkeeping and reporting requirements that are sufficient to ensure compliance with the applicable requirements, we have no occasion to explore alternatives to full approval under CAA section 110(k), such as a partial approval/partial disapproval or a conditional approval, with respect to this issue, nor does the EPA believe that it will be necessary to require the SCAQMD to submit the program and parameters of the public's access to WAIRE program compliance data for inclusion as part of the SIP.

CCAEJ Comment #2: Citing the EPA's proposed approval that states that the online portal (WAIRE POP) will provide the public information about how warehouse operators and owners are complying with Rule 2305 and how WAIRE Mitigation Program funds are spent, the CCAEJ notes that no such portal exists and that the District has not yet finalized what data would be made available on that portal.

EPA Response to CCAEJ Comment #2: In comments submitted in response to the EPA's proposed rule, the SCAQMD indicates that the EPA's description of the WAIRE POP Portal in the proposed rule was not correct. The SCAQMD clarifies that the WAIRE POP Portal's purpose is to only electronically collect information, reports, and fees from warehouse owners and operators annually. The WAIRE POP Portal does not distribute information about the WAIRE Program to the public. If the public would like to enforce Rule 2305, they can request the data from the SCAQMD. This is in compliance with 40 CFR 51.211 which requires owners or operators of stationary sources to maintain records and periodically report these records to the State or District. The SCAQMD also indicates that it has created a separate web page to provide information on the WAIRE Program to the public. That page hosts links to various resources related to the WAIRE Program, including the WAIRE Program's annual report as stated in EPA Response to CCAEJ Comment #1.

G. International Warehouse Logistics Association (IWLA) Comments and EPA Responses

IWLA Comment #1: The IWLA believes that Rule 2305 will have unintended consequences and an overall negative effect on California's economy. The IWLA states that the mitigation fees accrued from the rule will raise the costs for California warehouse operators and increase the cost of living for Californians. The IWLA asserts that these increased costs will be regressive in nature and negatively impact lower-income communities.

EPA Response to IWLA Comment #1: The EPA notes that the commenter does not challenge EPA's conclusion that SCAQMD Rule 2305 generally meets all applicable CAA requirements but rather contends that rule will have unintended adverse economic and socioeconomic effects. However, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the minimum criteria set in the CAA or any applicable EPA regulations. Thus, considerations such as whether a District rule may be economically or technologically challenging cannot form the basis for EPA disapproval of a rule submitted by a State as part of a SIP.[104]

IWLA Comment #2: The IWLA asserts that the increased costs associated with Rule 2305 may cause some warehouse operators to relocate out of state and thereby increasing mobile source emissions as trucks travel from Southern California to new locations and decreasing employment opportunities.

EPA Response to IWLA Comment #2: With respect to economic challenges arising from Rule 2305, please see EPA Response to IWLA Comment #1. Also, we note that the SCAQMD considered the potential for warehouse relocation effects due to Rule 2305 based on two economic studies and peer reviews of those studies.[105] In response to comments on proposed Rule 2305, the SCAQMD stated that these studies fully analyze the range of potential economic impacts and conversely the monetized public health benefits of Rule 2305 (and its associated fee rule, Rule 316).[106] The SCAQMD indicates that the studies conclude that the costs potentially imposed by Rule 2305 (and Rule 316) are not anticipated to cause warehouses to relocate outside of the region.[107]

IWLA Comment #3: The IWLA states that Rule 2305's goal of reducing truck pollution is at the expense of the warehouse operator, not the truck operator. Moreover, the IWLA asserts that warehouse operators have no control over what types of trucks arrive at their facilities and that Rule 2305 does not incentivize trucking companies to upgrade their fleets to ZE/NZE trucks and is, in the end, simply a tax on warehouse operators.

EPA Response to IWLA Comment #3: With respect to economic or technological challenges arising from Rule 2305, please see EPA Response to IWLA Comment #1.

Nonetheless, the EPA acknowledges the challenges for warehouse operators in meeting the requirements of Rule 2305, but we note that warehouse operators have three basic options, or any combination of these options, through which to earn or obtain points sufficient to meet their WPCO and that all these options provide for points to be earned toward the WPCO from actions that do not involve ZE/NZE trucks or a combination of these options.

In addition, the EPA notes that, based on the SCAQMD's first Annual Report for the WAIRE Program, warehouse operators intend to meet their obligations under Rule 2305 in various ways with only limited reliance on the mitigation fee option as described in EPA's Response to BAR Logistics Comment #2.

IWLA Comment #4: The IWLA asserts that the SCAQMD has overreached its authority with Rule 2305 because, by statute, SCAQMD has jurisdiction over air pollutant emissions from stationary sources (*i.e.,* warehouses) in the region, but through Rule 2305, the SCAQMD is attempting to regulate mobile sources (trucks) even though the California Air Resources Board has jurisdiction over mobile sources.

[103] See SCAQMD, Compliance Advisory, ''Notice to All Warehouse Owners and Operators regarding Upcoming Enforcement Action and Potential Daily Penalties,'' September 12, 2023; and SCAQMD's list titled ''Rule 2305 violations issued on 12/14/2023.''

[104] *Union Electric Company* v. *EPA;* 427 U.S. 246, 265 (1976).

[105] SCAQMD, Final Staff Report, Appendix F, Master Response 5. The two economic studies are Industrial Economics, Inc. (IEc), ''Assessment of Warehouse Relocations Associated with the South Coast Air Quality Management District Warehouse Indirect Source Rule,'' December 23, 2020, and SCAQMD, ''Final Socioeconomic Impact Assessment for Proposed Rule 2305—Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316—Fees for Rule 2305,'' May 2021.

[106] SCAQMD, Final Staff Report, Appendix F, Master Response 5.

[107] Id.

EPA Response to IWLA Comment #4: Rule 2305 does not directly regulate mobile sources but is instead directed towards warehouses, which are facilities that attract mobile source emissions. As such, the EPA finds Rule 2305 to be an ISR regulation, and, in the proposed rule, the EPA addressed the issue of SCAQMD's authority under State law to adopt Rule 2305 by reference to California Health & Safety Code section 40440 (''Rules and regulations''), which authorizes the SCAQMD to provide for indirect source controls in those areas of the South Coast District that have high-level, localized concentrations of pollutants.[108]

IWLA Comment #5: The IWLA asserts that the SCAQMD has presented no plan on how the new revenues generated from Rule 2305 will be spent, and on this basis, the IWLA believes Rule 2305 to be ''arbitrary and capricious'' under State law.

EPA Response to IWLA Comment #5: The commenter has not identified the specific State law provision that would present an obstacle to the SCAQMD's implementation of Rule 2305 due to the purported absence of a plan for spending mitigation fees collected by the Agency. The EPA notes that, in adopting Rule 2305, the SCAQMD Board directed the SCAQMD Executive Officer to develop the WAIRE Mitigation Program with funds generated from mitigation fee payments from Rule 2305.[109] The SCAQMD Board has established certain parameters that will govern how funds generated from mitigation fee payments are to be spent, how funds are to be awarded, and where funds are to be spent.

IWLA Comment #6: In addition to the hefty fees associated with Rule 2305, the IWLA asserts that there are many additional burdensome reporting requirements that will add substantial administrative fees to warehouse operations.

EPA Response to IWLA Comment #6: The reporting requirements in SCAQMD Rule 2305 are important elements of the rule to document compliance with the requirements of the rule and to provide for enforceability of the rule by the District, the EPA, and citizens. The EPA notes that the SCAQMD expects the administrative costs associated with recordkeeping and reporting for Rule 2305 to be similar to the administrative costs associated with CARB's Advanced Clean Trucks Regulation, specifically for large entity reporting, which is estimated to be no more than 25 hours of work totaling $1,250 per year.[110]

IWLA Comment #7: The IWLA states that the WAIRE mitigation points system requires warehouses to mitigate external truck emissions through the use of more sustainable technology within their warehouse operation and infrastructure, but much of the technology is still in its nascent phase and is presently cost-prohibitive and unproven in the field, especially as it pertains to hydrogen technology and heavy-duty ZE/NZE trucks.

EPA Response to IWLA Comment #7: In reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the minimum criteria set in the CAA or any applicable EPA regulations. Thus, considerations such as whether a District rule may be economically or technologically challenging cannot form the basis for EPA disapproval of a rule submitted by a State as part of a SIP.[111]

However, as noted in the EPA Response to BAR Logistics Comment #2, based on the SCAQMD's first Annual Report for the WAIRE Program, warehouse operators intend to meet their obligations under Rule 2305 in various ways with only limited reliance on the mitigation fee option. The first Annual Report suggests that warehouse operators expect to meet their WPCOs, at least in the early years of the program, primarily through ZE hostler usage, (*i.e.,* yard tractors that move trailers and containers around warehouse facilities; approximately 40% of the anticipated WAIRE points based on the Initial Site Information Report (ISIRs) received), NZE Class 8 Truck Visits (approximately 27%), and ZE hostler acquisition (approximately 8%).[112] More recent data shows that, for Year 2023, warehouse operators reported WAIRE Points primarily from hostler usage (53%), solar panel installation and usage (15%) and NZE truck usage (14%).[113]

IWLA Comment #8: The IWLA asserts that the stringency factor of 0.0025 seems to be arbitrary, there does not seem to be any modeling or science behind how the number was derived, and the hypothetical emission reductions do not appear to be practical. Furthermore, the stringency factor in Rule 2305 can be increased at any time by the SCAQMD Board, at its sole discretion.

EPA Response to IWLA Comment #8: Under SCAQMD Rule 2305, the stringency factor is used along with WATT and an annual variable to determine the annual WPCO for a warehouse operator.[114] The stringency factor in Rule 2305 is 0.0025 WAIRE Points per WATT.

During the District's rulemaking process, the SCAQMD explained that the stringency factor was developed on the basis of an analysis of 18 WAIRE Menu compliance scenarios and additional supporting analysis in the Socioeconomic Impact Assessment, including a warehouse relocation study.[115] The SCAQMD noted that there is no mathematical equation governing the entire process, nor is there an overarching governing equation required, and that the totality of the impact of Rule 2305 was considered for the stringency of 0.0025 WAIRE Points per WATT.[116] According to the SCAQMD, the benefits of Rule 2305 at the recommended stringency include, but are not limited to: significant emission reductions of about 1.5 to 3 tons per day of NO_X, the encouragement of many facilitating measures to enhance emission reductions from other programs, public health benefits for most compliance scenarios that are about three times higher than the costs, costs on industry that are not out of line with normal cost increases that the industry experiences routinely in rent hikes, a market signal for the goods movement industry to encourage adoption NZE and ZE technologies on a more widespread basis than the unregulated market would provide—and much faster than CARB would require with its regulations, satisfying the requirements of control measure MOB–03 in the 2016 AQMP, satisfying the commitment in AB 617 Community Emission Reduction Plans, and reducing emissions for local communities located closest to warehouses who have experienced disproportionate environmental burdens just by living where they do.[117]

The SCAQMD Board could, in the future, consider increasing the stringency factor, but prior to adoption, the SCAQMD would be required to meet State procedural requirements for rule amendments that including providing notice to the public of the proposed amendments and the opportunity for

[108] 88 FR 70616, 70620–70621.

[109] SCAQMD Resolution 21–9, adopted May 7, 2021, pp. 6–7.

[110] SCAQMD Final Staff Report, p. 74.

[111] *Union Electric Company* v. *EPA;* 427 U.S. 246, 265 (1976).

[112] 88 FR 70616, 70619, citing information from SCAQMD, Annual Report for the Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program, January 2023, p. 15.

[113] SCAQMD, Hybrid Mobile Source Committee Meeting, Agenda, March 15, 2024, p. 18.

[114] SCAQMD Rule 2305(d)(1)(A).

[115] SCAQMD, Final Staff Report, Appendix F, Response to Comment 45–6.

[116] Id.

[117] Id.

public comment. No such amendment would be federally enforceable unless and until the State submits, and the EPA approves, amended Rule 2305 as a revision to the SIP under CAA section 110(k).

IWLA Comment #9: The IWLA asserts that warehouses in SCAQMD coverage areas will be placed at a competitive disadvantage and beneficial cargo owners will look to divert their cargo to alternative areas in surrounding States or to alternative ports of entry to warehouse and distribute their goods.

EPA Response to IWLA Comment #9: Please see EPA Response to IWLA Comment #2.

IWLA Comment #10: The IWLA states that Rule 2305 does not adequately address why the SCAQMD or another air district cannot adopt even more expansive ISRs (*e.g.,* what would stop SCAQMD from imposing an ISR on retailers based on vehicle traffic to their locations).

EPA Response to IWLA Comment #10: This comment is beyond the scope of this rulemaking. The EPA will consider future ISRs for compliance with CAA requirements if and when such ISRs are submitted as revisions to the SIP.

IWLA Comment #11: The IWLA asks that the EPA not approve SCAQMD Rule 2305 into the California SIP.

EPA Response to IWLA Comment #11: Under CAA section 110(k), the EPA is obligated to approve, disapprove, or conditionally approve, in whole or in part, SIP revisions submitted to the Agency within a prescribed period. Thus, the EPA is obligated to take a final action on Rule 2305. In addition, the EPA notes that an EPA disapproval of Rule 2305 would not prevent the implementation of Rule 2305 within the SCAQMD because the rule would still be enforceable, under State law, regardless of the EPA's action to approve or disapprove SCAQMD Rule 2305 as a revision to the California SIP. The consequence of the EPA's approval of Rule 2305 as a revision to the SIP is that the rule becomes federally enforceable.

H. Private Citizen Comments and EPA Responses

Private Citizen Comment #1: The private citizen states that the EPA is calling for SCAQMD Rule 2305 to go into effect and for the affected parties to conform to SCAQMD Rule 2305 by the 2024 calendar year. This compliance deadline, contends the private citizen, will have a negative impact on warehouses, specifically the truck drivers that Rule 2305 will impact. The private citizen contends that it is unreasonable to require a warehouse to comply by the beginning of 2024 or pay a mitigation fee.

EPA Response to Private Citizen Comment #1: The EPA notes that the commenter does not challenge EPA's conclusion that SCAQMD Rule 2305 generally meets all applicable CAA requirements but rather contends that rule will go into effect with insufficient time for warehouse operators to meet the requirements and will thereby result in negative economic effects. However, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the minimum criteria set in the Clean Air Act or any applicable EPA regulations. Thus, considerations such as whether a District rule may be economically or technologically challenging cannot form the basis for EPA disapproval of a rule submitted by a State as part of a SIP.[118]

Also, an EPA disapproval of Rule 2305 would not prevent the implementation of Rule 2305 within the SCAQMD because the rule would still be enforceable, under State law, regardless of the EPA's action to approve or disapprove SCAQMD Rule 2305 as a revision to the California SIP. The timing of the EPA's approval of Rule 2305 as a revision to the SIP does not affect the compliance deadlines set forth in the rule (and that already are in effect under State law) but, rather, affects when the rule becomes federally enforceable.

Lastly, we note that Rule 2305 has been in effect since May 2021 and that the rule was designed to apply the requirements in three phases beginning with year 2022 with the largest warehouses (greater than or equal to 250,000 square feet), then to year 2023 for medium-sized warehouses (between 150,000 and 250,000 square feet), and then to year 2024 for smaller warehouses (100,000 to 150,000 square feet).[119] Within each phase, the requirements themselves are phased in through the use of an annual variable that begins with a 0.33 value in the first year, a 0.67 value in the second year, and a 1.0 value in the third and subsequent years.[120] Again, the timing of the EPA's action on SCAQMD Rule 2305 under CAA section 110(k) has no effect on the compliance deadlines set forth in Rule 2305.

Private Citizen Comment #2: The private citizen asserts that the proposed rule fails to adequately address the ambiguity in CAA section 110(a)(5) as to whether the term ''indirect source review program'' encompasses existing, as well as new or modified, facilities. The private citizen states that the ambiguity poses a problem for compliance with the new rule. Also, the private citizen states that the EPA's proposed rule fails to address the ambiguity in a meaningful way, which, in turn, may lead to litigation and potential delay in achieving the emissions reductions that the rule is intended to achieve.

EPA Response to Private Citizen Comment #2: With respect to the comment regarding the applicability of ISR programs to existing, and not just new or modified, indirect sources under CAA section 110(a)(5), please see EPA Response to POLB Comment #3.

As to the issue of the purported ambiguity in CAA section 110(a)(5) affecting compliance with Rule 2305, we note that Rule 2305 unambiguously applies to both existing and new warehouses of a certain size, and thus, the purported ambiguity in CAA section 110(a)(5) has no bearing on compliance with Rule 2305.

Lastly, as to the potential for this issue to lead to litigation, the EPA notes that this particular issue was included among the issues raised in a legal challenge against the SCAQMD's adoption of Rule 2305. In that case, the Court ruled in favor of the SCAQMD and, as to this issue, stated: ''Nothing in the text, structure, or purpose of the indirect-source-review provision suggests that this phrase limits indirect source reviews to those based on new and modified indirect sources.'' [121] The EPA finds that the Court's decision and rationale provide further support to the EPA's conclusion as to this particular issue.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving SCAQMD Rule 2305 into the California SIP. The EPA concludes that, while SCAQMD Rule 2305 does not meet all the evaluation criteria for enforceability (*i.e.,* certain definitions that cross-reference rules that are not part of the SIP, the sunset clause, and certain instances of unbounded director's discretion), we are taking final action to approve it because it is not a required SIP element and would

[118] *Union Electric Company* v. *EPA;* 427 U.S. 246, 265 (1976).

[119] SCAQMD Rule 2305, Table 1.

[120] SCAQMD Rule 2305, Table 2.

[121] *CTA* v. *SCAQMD,* Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt, 73), Dkt. 162, December 14, 2023, p. 28.

strengthen the SIP. In light of the deficiencies, however, the EPA concludes that the submitted rule should not be credited in any attainment and rate of progress/reasonable further progress demonstrations. This final action incorporates SCAQMD Rule 2305 into the federally enforceable SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of SCAQMD Rule 2305, Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program, adopted on May 7, 2021, that establishes an Indirect Source Review program for certain warehouse owners and operators within the SCAQMD. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The SCAQMD did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. However, the Community Steering Committees for four communities admitted into the State's Community Air Protection Program, created by Assembly Bill 617, in the affected area requested development of a warehouse ISR rule due to concerns regarding air pollution impacts from trucks and diesel particulate matter.[122] The focus of the Community Air Protection Program is to reduce exposure in communities most impacted by air pollution.[123] The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 4, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

[122] SCAQMD Final Staff Report, pp. 9–10.

[123] CARB, Community Air Protection Blueprint For Selecting Communities, Preparing Community Emissions Reduction Programs, Identifying Statewide Strategies, and Conducting Community Air Monitoring, October 2018, page 1.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding reserved paragraph (c)(615) and adding paragraph (c)(616) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(615) [Reserved]

(616) The following regulation was submitted on August 13, 2021, by the Governor's designee.

(i) *Incorporation by reference.* (A) South Coast Air Quality Management District.

(*1*) Rule 2305, ''Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program,'' adopted on May 7, 2021.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

* * * * *

[FR Doc. 2024–20349 Filed 9–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA–HQ–OAR–2024–0065; FRL–11597–01–OAR]

RIN 2060–AW15

Phasedown of Hydrofluorocarbons: Vacated Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency is taking final action to remove regulations from the Code of Federal Regulations that have been vacated by the United States Court of Appeals for the District of Columbia Circuit related to the prohibition of disposable cylinders and tracking of cylinders of hydrofluorocarbons.

DATES: This final rule is effective on September 11, 2024.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2024–0065. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard-copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Connor Henderson, Stratospheric Protection Division and Office of Air and Radiation (6205A), Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, DC 20460; telephone number: 202–564–2177; email address: *Henderson.Connor@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action may be relevant for you if you produce, import, export, destroy, use as a feedstock or process agent, reclaim, or recycle HFCs. Potentially relevant categories, North American Industry Classification System (NAICS) codes, and examples of potentially relevant entities are included in table 1. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that may be interested in this action. If you have questions regarding the relevance of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY RELEVANT ENTITIES

NAICS Code	NAICS industry description
325120	Industrial Gas Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325211	Plastics Material and Resin Manufacturing.
325412	Pharmaceutical Preparation Manufacturing.
325414	Biological Product (except Diagnostic) Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326220	Rubber and Plastics Hoses and Belting Manufacturing.
326150	Urethane and Other Foam Product.
326299	All Other Rubber Product Manufacturing.
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
333511	Industrial Mold Manufacturing.
334413	Semiconductor and Related Device Manufacturing.
334419	Other Electronic Component Manufacturing.
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.
336212	Truck Trailer Manufacturing.
336214	Travel Trailer and Camper Manufacturing.
336411	Aircraft Manufacturing.
336611	Ship Building and Repairing.
336612	Boat Building.
339112	Surgical and Medical Instrument Manufacturing.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.
423740	Refrigeration Equipment and Supplies Merchant Wholesalers.
423830	Industrial Machinery and Equipment Merchant Wholesalers.
423840	Industrial Supplies Merchant Wholesalers.
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.
424690	Other Chemical and Allied Products Merchant Wholesalers.
488510	Freight Transportation Arrangement.
541380	Testing Laboratories.