

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone covering all navigable waters of the Oakland Estuary, which will exclude vessels from entering the regulated area unless authorized by the COTP. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Revise § 165.1190 to read as follows:

§ 165.1190 Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA.

(a) *Locations.* The following areas are security zones:

(1) *Coast Guard Island.* All waters of the Oakland Estuary, from surface to bottom, encompassed by a line connecting the following points beginning at 37°46′42.5″ N, 122°14′51.4″ W; thence to 37°46′46.6″ N, 122°14′59.7″ W; thence to 37°46′51.8″ N, 122°15′7.4″ W; thence to 37°46′56.3″ N, 122°15′12.1″ W; thence to 37°47′2.2″ N, 122°15′16.4″ W; thence to 37°47′8″ N, 122°15′16.6″ W; thence to 37°47′10″ N, 122°15′12.8″ W; thence to 37°47′10.1″ N, 122°15′5.7″ W; thence to 37°47′7.8″ N, 122°15′0.1″ W; thence to 37°47′5.2″ N, 122°14′53.7″ W; thence to 37°47′2.1″ N, 122°14′49.5″ W; thence to 37°46′58.9″ N, 122°14′46.2″ W; thence to 37°46′57.1″ N, 122°14′44.6″ W; thence to 37°46′52.9″ N, 122°14′42.6″ W; thence to 37°46′50.2″ N, 122°14′42.9″ W; thence to 37°46′47.9″ N, 122°14′43.6″ W; thence to 37°46′42.3″ N, 122°14′44.1″ W; and back to the beginning point. These coordinates are based on North American Datum (NAD) 83.

(2) *Coast Guard Island Causeway.* All waters of the Oakland Estuary, from surface to bottom, 50 yards on either side of a line beginning at 37°46′48.1″ N, 122°14′45.8″ W; thence to 37°46′46.1″ N, 122°14′41.5″ W; thence to 37°46′45.4″ N, 122°14′36.6″ W. These coordinates are based on NAD 83.

(b) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a)(1) of this section unless authorized by the Captain of the Port (COTP). The security zone described in paragraph (a)(1) of this section is closed to all vessel traffic, except as may be permitted by the COTP. To seek permission to enter the security zone in paragraph (a)(1) of this section, contact the COTP by VHF Marine Radio channel 16 or through the 24-hour Command Center at telephone (415) 399–3547. Those in the security zone must comply with all lawful orders

or directions given to them by the COTP.

(2) Under the general security zone regulations in subpart D of this part, you may not loiter in the security zone described in paragraph (a)(2) of this section unless authorized by the COTP. Vessels must make a direct passage through the security zone described in paragraph (a)(2) of this section.

(c) *Enforcement.* The Captain of the Port will enforce this security zone and may be assisted in the patrol and enforcement of this security zone by any Federal, State, county, municipal, or private agency.

Dated: March 30, 2023.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port, Sector San Francisco.

[FR Doc. 2023–07223 Filed 4–6–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0202; FRL–10873–03–R9]

Determination To Defer Sanctions; California; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the California Air Resources Board (CARB) has submitted a rule and other materials on behalf of the Mojave Desert Air Quality Management District (MDAQMD or “District”) that correct deficiencies in its Clean Air Act (CAA or “Act”) state implementation plan (SIP) provisions concerning reasonably available control technology (RACT) ozone nonattainment requirements for controlling emissions of oxides of nitrogen (NO_x) and volatile organic compounds (VOCs) from internal combustion engines. This determination is based on a proposed approval, published elsewhere in this issue of the **Federal Register**, of MDAQMD’s Rule 1160 which regulates this source category. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous limited disapproval by the EPA in 2021 is now deferred. If the EPA finalizes its approval of MDAQMD’s submission, relief from these sanctions will become permanent.

DATES: This interim final determination is effective April 7, 2023. However, comments will be accepted on or before May 8, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0202 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 942-3245 or by email at evanshopper.lakenya@epa.gov.

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

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I. Background

On September 10, 2021 (86 FR 50643) (“2021 final rule”), the EPA issued a final rule promulgating a limited approval and limited disapproval for the MDAQMD rule listed in Table 1 that was submitted by CARB to the EPA for inclusion into the California SIP.

TABLE 1—DISTRICT RULE WITH PREVIOUS EPA ACTION

Rule No.	Rule title	Amended	Submitted	EPA action in 2021
1160	Internal Combustion Engines	01/22/2018	05/23/2018	Limited Approval and Limited Disapproval.

Areas classified as Moderate or above nonattainment for an ozone standard must implement RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs and NO_x (see CAA section 182(b)(2), (f)). The MDAQMD contains parts of the Western Mojave Desert ozone nonattainment areas, which is classified as Severe-15 nonattainment for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 2008 8-hour ozone NAAQS (see 40 CFR 81.305).

In the 2021 final rule, we determined that although the MDAQMD rule strengthened the SIP and was largely consistent with the requirements of the CAA, the submitted rule included three deficiencies that precluded our full approval of the rule into the SIP. MDAQMD’s previously submitted Rule 1160 allowed for engines to comply

with an alternative emission reduction provision instead of the concentration-based emission limits for NO_x. The EPA found that this provision was not sufficiently clear to constitute an enforceable emission limitation, control measure, means or technique, as required under section 110(a)(2) of the Act, contained unapprovable director’s discretion, and had not been sufficiently justified as meeting RACT stringency levels. Second, under the alternative emission reduction option, the rule allowed units operating at the same facility to aggregate their emissions in order to comply with a percentage reduction. The rule provisions did not meet the criteria for economic incentive program (EIP) integrity because they failed to require that any excess emission reductions credited through the provision be surplus (*i.e.*, not required by any other federally

enforceable provision).¹ This omission could allow reductions that are otherwise federally required to be aggregated and therefore allow greater emissions at other units.

Finally, the compliance determination requirements under the rule did not require adequate source testing for emission units without emission control equipment.

Pursuant to section 179 of the CAA and our regulations at 40 CFR part 52, the disapproval action on Rule 1160 under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action’s effective date of October 12, 2021, and highway sanctions 6 months later.

On January 23, 2023, the MDAQMD revised Rule 1160, and on March 3, 2023, CARB submitted it to the EPA for approval into the California SIP as shown in Table 2 below.

TABLE 2—SUBMITTED RULE

Rule No.	Rule title	Revised	Submitted
1160	Internal Combustion Engines	01/23/2023	03/03/2023

On March 17, 2023, the Submittal for MDAQMD Rule 1160 was determined to meet the completeness criteria in 40

CFR part 51, appendix V, which must be met before formal EPA review.

The revised MDAQMD Rule 1160 in Table 2 is intended to address the disapproval issues in our 2021 final

¹ See “Improving Air Quality with Economic Incentive Programs” (EPA-452/R-01-001, January 2001).

rule. In the Proposed Rules section of this issue of the **Federal Register**, we have proposed approval of the revised MDAQMD Rule 1160. Based on this proposed action approving Rule 1160 into the California SIP, we are also making this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2021 final rule on Rule 1160, because we believe that the submittal corrects the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed approval of MDAQMD Rule 1160, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2021 final rule would be permanently terminated on the effective date of our final approval of Rule 1160.

II. The EPA's Evaluation and Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our limited disapproval action on September 10, 2021, of MDAQMD's Rule 1160 with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve MDAQMD Rule 1160 which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that MDAQMD Rule 1160, amended on January 23, 2023, addresses the limited disapproval issues under part D of title I of the CAA identified in our 2021 final rule and the amended rule is now fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the

State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this action is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. 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) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the 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).

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

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2023. Filing a petition for reconsideration by the EPA Administrator of this final action does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such action. This action may not be challenged later in proceedings to

enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection,
Administrative practice and procedure,

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

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

Dated: March 30, 2023.

Kerry Drake,

Acting Regional Administrator, Region IX.

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