

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Staff Report

Proposed Amended Regulation III – Fees

Including:

Proposed Amended Rule 301 – Permitting and Associated Fees
Proposed Amended Rule 303 – Hearing Board Fees
Proposed Amended Rule 304 – Equipment, Materials, and Ambient Air Analyses
Proposed Amended Rule 304.1 – Analyses Fees
Proposed Amended Rule 306 – Plan Fees
Proposed Amended Rule 307.1 – Alternative Fees for Air Toxics Emissions Inventory
Proposed Amended Rule 308 – On-Road Motor Vehicle Mitigation Options Fees
Proposed Amended Rule 309 – Fees for Regulation XVI and Regulation XXV
Proposed Amended Rule 311 – Air Quality Investment Program (AQIP) Fees
Proposed Amended Rule 313 – Authority to Adjust Fees and Due Dates
Proposed Amended Rule 314 – Fees for Architectural Coatings
Proposed Amended Rule 315 – Fees for Training Classes and License Renewal
Proposed Amended Rule 316 – Fees for Rule 2305
Proposed Amended Rule 320 – Automatic Adjustment Based on Consumer Price Index for Regulation III Fees

April 2023

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EXECUTIVE SUMMARY

Regulation III – Fees establishes the fee rates and schedules to recover South Coast Air Quality Management Districts’ (South Coast AQMD or District) reasonable costs of regulating and providing services, primarily to permitted sources. The agency’s Permitted Source Program¹ is principally supported by three types of fees, namely permit processing fees for both facility permits and equipment-based permits, annual permit renewal fees, and emission-based annual operating fees, all of which are contained in Rule 301 – Permitting and Associated Fees. Also included in the Permitted Source Program are Rule 222 registration fees and plan fees, since these are similar to permits for the sources to which they apply. Regulation III also establishes fees and rates for other fee programs, unrelated to the Permitted Source Program, including but not limited to Transportation Programs fees, Rule 2305 – Warehouse Actions and Investments to Reduce Emissions (WAIRE) program fees, and Area Source fees (architectural coatings).

Proposed Amended Regulation III is annually brought to the South Coast AQMD Governing Board for consideration for adoption, often in conjunction with the Proposed Budget and Work Program. These proposed amendments and budget typically include a California Consumer Price Index (CPI) increase or adjustment of the majority of fees contained in Regulation III pursuant to Rule 320 and the California Health and Safety Code (H&SC),² along with necessary proposed fee increases for the purposes of cost recovery and other administrative changes for clarifications, deletions, or corrections to existing rule language.

With this proposal, South Coast AQMD seeks to update its fee rules with proposed amendments aimed at cost recovery, clarifications, and corrections. Staff is proposing the following amendments to Regulation III:

- An automatic increase/adjustment of most fees by 5.6% consistent with the percent increase in California CPI from December 2021 to December 2022.
- Two targeted proposals with potentially increased fees, all of which are necessary to provide more specific cost recovery for regulatory actions taken by the South Coast AQMD that include, but are not limited to, permitting and rule implementation. These proposals include:
 - 1) A proposal to authorize automatic adjustments of most fees adopted after October 29, 2010 by the percent increase in California CPI for the preceding calendar year under Rule 320, and
 - 2) A proposal to increase permit processing, annual renewal, and plan processing fees by 4% above the CPI that will be phased in over the next two years (2% of the increase in fiscal year 2023-2024 and an additional 2% increase in fiscal year 2024-2025).

¹ H&SC Section 42300 *et seq.*

² H&SC Sections 40500.1 and 40510.

- Four proposals for administrative changes to Regulation III, which have no fee impact, but include clarifications or corrections to existing rule language. These proposals include:
 - 1) A proposal for several administrative changes to Rule 307.1 to improve consistency with other rules and rule legibility;
 - 2) A proposal to clarify in Rule 306 the fee already required to be paid by a Metal Recycling or Metal Shredding Facility when submitting or updating a registration form pursuant to Rule 1460 – Control of Particulate Emissions from Metal Recycling and Shredding Operations subdivision (k);
 - 3) A proposal clarifying the existing rule language regarding refunds associated with application cancellations and relocating this rule language from Rule 313 to Rule 301; and
 - 4) A proposal clarifying the Annual Emission Reporting threshold values in Rule 301 Table III – Emission Fees.

South Coast AQMD continues to seek out cost-containment opportunities and maintain revenue reserves in an effort to address future challenges. These challenges include but are not limited to: changes in federal grant funding levels, increased retirement costs due to actuarial and investment adjustments, variations in one-time penalties, and uncertainty associated with external factors affecting the economy.

CHAPTER 1 – BACKGROUND

INTRODUCTION

LEGAL AUTHORITY, DESCRIPTION OF SOUTH COAST
AQMD'S PERMITTED SOURCE PROGRAM AND OTHER FEES,
AND RELATIONSHIP OF FEES TO SOUTH COAST AQMD'S
BUDGET

PROPOSITION 26 COMPLIANCE

PUBLIC PROCESS

INTRODUCTION

Proposed Amended Regulation III is brought to the South Coast AQMD Governing Board for consideration on an annual basis, often in conjunction with the Proposed Budget and Work Program. These proposed amendments and budget typically include a California Consumer Price Index (CPI) increase or adjustment of the majority of fees contained in Regulation III – Fees pursuant to Rule 320 – Automatic Adjustment Based on Consumer Price Index for Regulation III Fees and the California Health and Safety Code (H&SC), along with necessary proposed fee increases for the purposes of cost recovery and other administrative changes for clarifications, deletions, or corrections to existing rule language. South Coast Air Quality Management District (South Coast AQMD or District) Regulation III – Fees is comprised of the list of active rules below:

- Rule 301 – Permitting and Associated Fees (Amended May 6, 2022),
- Rule 302 – Fees for Publication (Amended February 12, 1993),
- Rule 303 – Hearing Board Fees (Amended May 6, 2022),
- Rule 304 – Equipment, Materials, and Ambient Air Analyses (Amended May 6, 2022),
- Rule 304.1 – Analyses Fees (Amended May 6, 2022),
- Rule 306 – Plan Fees (Amended May 6, 2022),
- Rule 307 – Fees for Air Toxics Emissions Inventory (Amended June 9, 2006),
- Rule 307.1 – Alternative Fees for Air Toxics Emissions Inventory (Amended May 6, 2022),
- Rule 308 – On-Road Motor Vehicle Mitigation Options Fees (Amended May 6, 2022),
- Rule 309 – Fees for Regulation XVI and Regulation XXV (Amended May 6, 2022),
- Rule 310 – Amnesty for Unpermitted Equipment (Adopted March 5, 2010),
- Rule 310.1 – Amnesty for Unpermitted Equipment and Small Business Discount for Control Equipment (Adopted June 3, 2011),
- Rule 311 – Air Quality Investment Program (AQIP) Fees (Amended May 6, 2022),
- Rule 313 – Authority to Adjust Fees and Due Dates (Amended May 6, 2022),
- Rule 314 – Fees for Architectural Coatings (Amended May 6, 2022),
- Rule 315 – Fees for Training Classes and License Renewal (Amended May 6, 2022),
- Rule 316 – Fees for Rule 2305 (Adopted May 7, 2021),
- Rule 317 – Clean Air Act Non-Attainment Fees (Amended February 4, 2011), and
- Rule 320 – Automatic Adjustment Based on Consumer Price Index for Regulation III Fees (Adopted October 29, 2010)

LEGAL AUTHORITY, DESCRIPTION OF SOUTH COAST AQMD’S PERMITTED SOURCE PROGRAM AND OTHER FEES, AND RELATIONSHIP OF FEES TO SOUTH COAST AQMD’S BUDGET

The H&SC provides South Coast AQMD with the authority to adopt various fees to recover the costs of its programs. Health and Safety Code Section 40510(b) authorizes South Coast AQMD to adopt “a fee schedule for the issuance of variances and permits to cover the reasonable cost of permitting, planning, enforcement, and monitoring related thereto.” Virtually every cost related to regulating permitted sources may be recovered under this type of fee.³ Entities regulated through

³ H&SC Section 40506

the South Coast AQMD’s Permitted Source Program receive two types of permits: facility permits and equipment-based permits. These permits apply to each permitted facility or each piece of permitted equipment. RECLAIM⁴ and Title V facilities receive a facility permit which incorporates all of their equipment-based permits into a single document, whereas other sources receive independent equipment-based permits.

South Coast AQMD has adopted three basic types of Permitted Source Program fees: permit processing fees, annual renewal operating fees (equipment-based), and emissions-based operating fees. Traditionally, South Coast AQMD has endeavored to recover its costs of permit processing from permit processing fees, its costs of inspection and enforcement from annual renewal operating fees, and its indirect costs necessary to conduct overall Permitted Source Program regulatory activities, including related planning, monitoring, rule development and outreach programs, from emissions-based operating fees.⁵ In recent years, some of these indirect costs have been recovered from annual operating fees rather than emissions-based fees, since emissions fees are a declining source of revenue, without a corresponding reduction in necessary rulemaking efforts and other permit-related activities.

The current structure for permit processing fees derives ultimately from a study of actual time spent processing permits, conducted by KPMG Peat Marwick. Permit processing fee schedules were subsequently developed and updated based on actual time spent processing various types of equipment as gathered by permit processing staff.⁶ In subsequent years, reviews of permit processing fees have only confirmed or updated these schedules based on processing time.⁷

The fee for equipment-based permits to construct or operate are based on the type of equipment involved, with higher fees for equipment with higher emissions and/or more complex relationships between operation and emissions, which require a higher level of staff effort to review and evaluate the associated permit applications for compliance with applicable rules and regulations. Each type of basic equipment and control equipment is assigned a fee schedule, A through H, as set forth in Rule 301, Tables IA and IB. For some equipment, a permit to construct is issued prior to issuing a permit to operate. For other equipment or application types, a permit to operate is issued directly.

⁴ RECLAIM stands for REgional CLean Air Incentives Market, a cap-and-trade program that regulates the emissions of NO_x and SO_x in the South Coast Air Basin.

⁵ California courts have upheld the use of emissions-based fees to cover these types of costs, holding that such an allocation method is reasonably related to an air district’s costs of regulating a permit holder’s air pollution. (*San Diego Gas & Electric Co. v. San Diego County APCD* (1988) 203 Cal. App. 3d 1132, 1148).

⁶ In November 1989, the consulting firm of Peat Marwick Main and Co. “...began a comprehensive study, in concert with South Coast AQMD staff to assess the status of District fee programs which are outlined in Regulation III.” The resulting “Recommendation Regarding Fee Assessment Study” report was presented to the South Coast AQMD Governing Board on March 28, 1990 (Agenda Item #10). On August 11, 1994, the South Coast AQMD Governing Board authorized an independent study of the South Coast AQMD’s fee structure and authority. A panel composed of representatives from Chevron, LA County Sanitation District, Hughes Environmental Corporation, Orange County Transportation Authority and the South Coast AQMD recommended the firm of KPMG to perform the study. A final “Report on the Study of the AQMD’s Fee Structure and Authority” was presented to the South Coast AQMD Governing Board on March 10, 1995 (Agenda Item #11). Both of these documents are available at the South Coast AQMD Library, 21865 East Copley Drive, Diamond Bar, CA 91765, (909) 396-2600.

⁷ See South Coast AQMD (2017) Regulation III – Fees, Final Staff Report, Section II D

The fees for renewal of permits to operate are further divided into two components: an equipment-based permit renewal fee and an emissions-based annual operating fee. The equipment-based permit renewal fee is based on the same equipment schedules used for the permit to construct/operate fee, i.e., the categories A through H, but some of the schedules are grouped together, resulting in only four fee rates for the equipment-based annual permit renewal fees.⁸ Each equipment fee schedule is assigned to one of the four annual permit renewal fee rates, based on the complexity of inspection and compliance activities and the emissions potential.

The emissions-based annual operating fee includes a flat fee paid by each facility and a tiered fee for sources emitting four or more tons per year of criteria pollutants (e.g., volatile organic compounds (VOC), nitrogen oxides (NOx), sulfur oxides (SOx), and particulate matter (PM)) and lesser amounts for emissions of specified air toxics. State law authorizes the use of emissions based fees (H&SC Section 40510(c)(1)).

RECLAIM and Title V facilities pay additional annual permit-related renewal fees to recover the additional costs associated with these types of facilities. South Coast AQMD uses schedules based on equipment type to ensure that permit to construct/operate fees and the equipment-based annual permit renewal fees reflect the costs required for permit processing and ongoing enforcement related activities. For sources subject to Fee Schedules F, G, and H, the potential variability in time required for permit processing of large/complex sources is addressed through the use of a minimum permit processing fee, with an option for billing hours above a specified baseline, up to a maximum total fee. For other types of equipment, permit processing fees are flat fees.

South Coast AQMD has further subdivided certain permit-related activities and imposed fees to at least partially recover their costs, such as Source Testing Review, analyses conducted pursuant to the California Environmental Quality Act (CEQA), and newspaper noticing, rather than grouping these costs into the basic permit processing or operating fees. This enables South Coast AQMD to more closely allocate the costs of specific permit-related activities to the payor responsible for the costs. While there are many sub-types of fees within the basic structure, such as special processing fees for CEQA analyses or health risk assessments (HRA), the three permit-related fees (permit processing, equipment-based annual permit renewal, and emissions-based annual operating fee) comprise the basic fee structure.

Also included in the South Coast AQMD's Permitted Source Program are Rule 222 registration fees and plan fees, since these are similar to permits for the sources to which they apply.^{9 10}

⁸ Note that annual renewal fees for compliance plans are the same as the equipment-based Schedule A fee. Rule 306 includes a list of compliance plans that are subject to annual renewal fees after approval. These plans generally include ongoing compliance requirements that necessitate review and verification by the agency's compliance staff.

⁹ H&SC Sections 40510(b) and 40522; Rule 301(u), and Rule 306.

¹⁰ Rule 222 registration fees are flat fees, but compliance plan fees include an initial payment and may be later invoiced for additional Time and Materials based on actual time spent on review. Plan fees also include annual renewal fees for specific plan types listed in Rule 306.

Additional fees also have been authorized by the legislature and are included in South Coast AQMD's existing fee regulation. These fees include: 1) variance and other Hearing Board fees;¹¹ 2) fees for the costs of programs related to indirect sources and areawide sources;¹² 3) fees to recover the costs to the air district and state agencies of implementing and administering the Air Toxics Hot Spots Program (AB 2588);¹³ 4) fees for refinery-related community air monitoring systems;¹⁴ and 5) fees for notices and copying documents.^{15, 16}

The above-referenced fees comprise approximately 59% of South Coast AQMD's revenue. Other sources of revenue for South Coast AQMD include revenue from mobile sources, including the Clean Fuels Fee, Carl Moyer and Proposition 1B funds. These are special revenue funds outside of the General Fund budget which pay for specific technology advancement or emission reduction projects approved by the South Coast AQMD Governing Board and are consistent with the specific limits on the use of those funds. Periodically, funds to reimburse South Coast AQMD for its administrative costs in carrying out these projects are transferred by South Coast AQMD Governing Board action into South Coast AQMD's General Fund budget. A second type of mobile source revenue is provided by AB 2766 (Motor Vehicle Subvention Program) from the 1992 legislative session, which provides South Coast AQMD with 30% of a four-dollar fee assessed on each motor vehicle registered within South Coast AQMD's jurisdiction. These funds must be used for the reduction of pollution from motor vehicles, and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the California Clean Air Act, or for the attainment or maintenance of state or federal ambient air quality standards or the reduction of toxic air contaminant emissions from motor vehicles.¹⁷ Specific mobile-source related programs are funded with this revenue source, as well as a proportionate share of activities such as ambient air quality monitoring and regional modeling which are not specifically related to stationary or mobile sources individually. These motor vehicle fees are currently set at the statutory maximum. AB 2766 fees have not been increased in over 20 years. Based on CPI, the real value of AB 2766 fees has therefore declined by about 68%. The remainder of the AB 2766 revenues provided to South Coast AQMD is divided between a share that is provided to cities and counties for mobile source emission reduction programs and a share that is used to fund mobile source emission reduction projects recommended by the Mobile Source Air Pollution Reduction Review Committee (MSRC) and approved by the South Coast AQMD Governing Board.

The legislature also has imposed certain limits on South Coast AQMD's fee authority. If South Coast AQMD proposes to increase existing permit fees by more than the change in the CPI, the increase must be phased in over a period of at least two years.¹⁸ Also, if a fee increase greater than CPI is adopted, the South Coast AQMD Governing Board must make a finding, based on relevant information in the rulemaking record, that the increase is necessary and will result in an

¹¹ H&SC 40510(b); Rule 303

¹² H&SC Section 40522.5 and Rules 2202, 314, and 316

¹³ H&SC Section 44380 et seq; 17 CCR Section 90700; and Rule 307.1

¹⁴ H&SC Section 42705.6 and Rule 301(aa)

¹⁵ H&SC Section 40510.7 and Rule 301(f)

¹⁶ The rule references are intended to provide examples of the different types of statutorily authorized fees. They are not intended to be a comprehensive listing of all applicable rule provisions.

¹⁷ H&SC Section 44223

¹⁸ H&SC Section 40510.5(b)

apportionment of fees that is equitable. This finding shall include an explanation of why the fee increase meets these requirements.¹⁹ These findings will be included in the South Coast AQMD Governing Board Resolution presented for the Public Hearing on Regulation III.

PROPOSITION 26 COMPLIANCE

On November 2, 2010, the voters of California enacted Proposition 26, which was intended to limit certain types of fees adopted by state and local governments. Proposition 26 broadly defines a tax to mean any charge imposed by a local government that does not fall within seven enumerated exceptions for valid fees. If a charge does not fall within an enumerated fee exception, it is considered a tax, and must be adopted by vote of the people. South Coast AQMD does not have authority under state law to adopt a tax, so it may only impose a charge that is a valid fee under Proposition 26.

Proposition 26 requires that the local government prove by a preponderance of the evidence that the amount of the fee “[1] is no more than necessary to cover the reasonable costs of the governmental activity, and that [2] the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.”²⁰ In this Staff Report, staff has provided a detailed explanation of the Permitted Source Program and the method of allocating program costs to the fee payors.

Proposition 26 also provides that an agency must establish by a preponderance of the evidence that the fee fits within one of the fee exceptions.²¹ In addition to the enumerated exceptions found in Proposition 26, courts have found that the proposition does not apply to fees adopted before its effective date.²²

All of the proposed fee increases discussed in this Staff Report fall within a recognized exception. In addition, all of the proposed increases bear a fair and reasonable relationship to a payor’s burdens on, or benefits received from South Coast AQMD’s activities.

PUBLIC PROCESS

Development of Proposed Amended Regulation III is being conducted through a public process. Public outreach was conducted to notify interested parties regarding Proposed Amended Regulation III through notifications including newspaper postings, mass mailings, and email notifications. A Public Consultation Meeting was held on March 21, 2023 and a second public consultation meeting is scheduled on April 11, 2023 to present proposed amendments to Regulation III and receive public comment. The proposed amendments will also be presented at the Budget Advisory Committee Meeting scheduled on April 5, 2023 and the Governing Board Special Meeting Budget Study Session on April 7, 2023 (subject to change).

¹⁹ H&SC Sections 40510(a)(4) and 40510.5(a)

²⁰ See Cal. Const. art. XIII C §1

²¹ Cal. Const., art. XIII C, §1

²² Brooktrails Township County. Servs. Dist. v. Bd. of Supervisors of Mendocino County (2013), 218 Cal. App. 4th 195, 206

Written comments relating to the CPI-based fee increase must be received by April 6, 2023 if they are to be incorporated into the Rule 320 report required by the Governing Board; however, later comments about the CPI increase, along with comments relating to other proposed fee increases and administrative amendments will be considered and should be submitted no later than Tuesday, April 18, 2023.

The public hearing to consider adoption of the fiscal year 2023-24 Budget and Work Program, fee adjustments, and Proposed Amended Regulation III is scheduled for Friday, May 5, 2023, at 9 a.m. (subject to change) in the auditorium at the South Coast AQMD's Diamond Bar Headquarters and via a Zoom link that will be available in the May 5, 2023 Governing Board agenda, which will be released no later than 72 hours prior to the Public Hearing.

CHAPTER 2 - CPI ADJUSTMENT OF FEES FOR REGULATION III

CPI ADJUSTMENT OF FEES FOR REGULATION III

Staff is proposing to increase most fees in Regulation III by the California CPI percent increase for the preceding calendar year, as set forth in Health & Safety Code (H&SC) Section 40500.1(a). In particular, staff is planning, where applicable, to adjust or increase fees in Rules 301, 303, 304, 304.1, 306, 307.1, 308, 309, 311, 313, 314, and 315 on July 1, 2023, to correspond with the increase in the calendar year 2022 CPI of 5.6%.

South Coast AQMD Rule 320 – Automatic Adjustment Based on Consumer Price Index for Regulation III -Fees provides for automatic CPI adjustments of most fees. Pursuant to Rule 320, most fees set forth in Regulation III “[...] shall be automatically adjusted by the change in the California Consumer Price Index for the preceding calendar year, as defined in H&SC Section 40500.1(a)”. This rule establishes that in order to continue recovering agency costs, fees must keep pace at a minimum with inflation as measured using the CPI. Adjustments of these fees automatically occur, unless otherwise directed by the South Coast AQMD Governing Board for a particular fiscal year. Staff is not proposing to forego Rule 320 CPI adjustments for the upcoming fiscal year.

The H&SC also provides authority for annual CPI increases of Regulation III fees. H&SC Section 40510 provides that fee increases within “the percentage increase of the California Consumer Price Index for the preceding calendar year” do not require the findings and phasing that apply for fee increases in excess of CPI. Staff is proposing to increase fees not otherwise automatically adjusted to correspond with the increase in the calendar year 2022 CPI of 5.6%. This increase would not apply to fees where the rate is set by state law or specifically exempted under Rule 320.

Both Rule 320 and the H&SC provide for the annual adjustment or increase of most fees commensurate with the rate of inflation. By design, an increase based on the percent increase of the California CPI is reasonable because it recovers the increase in South Coast AQMD’s costs as a result of inflation. In addition, the manner in which those increased costs are allocated bears a fair and reasonable relationship to the burdens on South Coast AQMD’s activities as established by the underlying fee schedule. Adjustments based on Rule 320 are not subject to Proposition 26 because Rule 320 was adopted prior to the effective date of Proposition 26. Table 2-1 lists the fees in Regulation III that are specifically excluded from the annual CPI-based fee rate increase and the reason for exclusion.

If South Coast AQMD proposes a fee increase greater than CPI, the South Coast AQMD Governing Board must make a finding, based on relevant information, in the rulemaking record, that the increase is necessary and will result in an apportionment of fees that is equitable. As this increase is based on the 2022 calendar year CPI and not greater, such findings are not required.

**Table 2-1
Fees Excluded From CPI-Based Fee Rate Adjustment**

Fee	Reason for Exclusion from CPI-Based Fee Rate Increase
Returned check service fee in various rules	Currently set by state law at \$25 (California Civil Code §1719(a)(1))
Rule 301 (aa)(2) – Rule 1180 Community Air Monitoring System Annual Operating and Maintenance Fees	Rule 301 paragraph (aa)(4) limits the annual operating and maintenance fees associated with Rule 1180 Community Air Monitoring Systems to a triennial fee reassessment. The first triennial reassessment was conducted in December 2021 and would occur every three years thereafter.
Rule 301 (w) – Enforcement Inspection Fees for Statewide Portable Equipment Registration Program (PERP) fees	Fee rates set by the state (California Code of Regulations Title 13, §2450 et. seq.)
Rule 307.1 (d)(2)(D) – Maximum fee for a small business as defined in Rule 307.1	Currently set by state law at \$300 (California Code of Regulations Title 17, §90704(h)(2))
Rule 307.1 Table I – Facility Fees By Program Category; “State Fee” column figures only	Fee rates set by the state (H&SC Section 44380 et. seq.)
Rule 311 (c) Air Quality Investment Program Fees	These fees pay for programs to reduce emissions under Rule 2202 – On Road Vehicle Mitigation Options and do not support South Coast AQMD’s Budget.

CHAPTER 3 – PROPOSED RULE AMENDMENTS WITH FEE IMPACTS

INTRODUCTION

AUTHORIZE AUTOMATIC ADJUSTMENTS TO MOST FEES BY
CPI

RULE 301 AND RULE 306 PERMITTING PROGRAM
PROCESSING AND ANNUAL RENEWAL FEE INCREASES

INTRODUCTION

In addition to the annual CPI-based fee rate increase described in Chapter 2 – CPI Adjustment of Fees for Regulation III, staff presents the following two proposals to amend Rule 320 – Automatic Adjustment Based on Consumer Price Index for Regulation III Fees, Rule 301 – Permitting and Associated Fees, and Rule 306 – Plan Fees to include new and increased fees:

- 1) Amend Rule 320 to authorize automatic CPI percent increase adjustments of most fees, and
- 2) Amend Rule 301 and Rule 306 regarding permitting program processing and annual renewals to increase permit processing, annual renewal, and plan processing fees by 4% above the CPI that will be phased in over the next two years (2% of the increase in fiscal year 2023-2024 and an additional 2% increase in fiscal year 2024-2025).

The fees from these two proposals, which are discussed in more detail below, are necessary to allow for consistency and recovery of the reasonable costs of South Coast AQMD’s regulatory activities. Any additional amendments that represent renumbering of rule sections/tables, amendments that are due solely to any proposed addition and/or deletion of preceding rule sections/tables, are not separately listed below.

1. AMEND RULE 320 FOR AUTOMATIC CPI ADJUSTMENT OF MOST FEES AND CLARIFY APPLICABILITY OF THE RULE TO FEES ADOPTED AFTER OCTOBER 29, 2010

Description of Proposed Amendment

The Health and Safety Code (H&SC) provides South Coast AQMD with the authority to annually increase fees by an amount not greater than the change in CPI for the preceding calendar year (See H&SC Section 40500.1 [“fees assessed on stationary sources in the south coast district ... shall not exceed, for any fiscal year, the actual costs of district programs ... for the immediately preceding fiscal year with an adjustment not greater than the change in the California Consumer Price Index, for the preceding calendar year[.]”]; H&SC Section 40510(a)(4) [providing requirements to justify, with findings of fact supported by relevant information in the public record, fee increases *in excess of* the CPI]; and H&SC Section 40510.5 [permit fees in excess of the CPI require findings of fact showing that the fee increase is necessary and will result in an apportionment of fees that is equitable and phasing in over a period of at least two years]).

In anticipation of the potential impacts of Proposition 26, the South Coast AQMD Governing Board adopted Rule 320 on October 29, 2010. In keeping with the intent of the H&SC, Rule 320 provides a mechanism by which most fees in Regulation III are automatically adjusted by the change in CPI for the preceding calendar year. As a result of uncertainty regarding the application of Proposition 26, the Governing Board sought to ensure that fees already existing in Regulation III as of October 29, 2010 – the time of Rule 320’s adoption – would continue to be adjusted. Accordingly, Rule 320 provides that “each fee set forth in Regulation III as of October 29, 2010 shall be automatically adjusted by the change in the California Consumer Price Index for the preceding calendar year[.]”

Rule 320 exempts specified fees from this automatic adjustment. It also provides that the Governing Board may forego the automatic CPI adjustments, or make a different adjustment, for

all or some fees in a given fiscal year through Rule adoption. In that case, Rule 320 provides that automatic CPI adjustments would resume in subsequent years.

In the years since the adoption of Rule 320 and Proposition 26, South Coast AQMD's needs and aims have continued to expand. The South Coast AQMD has focused its efforts on achieving attainment, curtailing emissions of toxics, and responding to numerous major air quality incidents throughout its jurisdictional boundaries. In an effort to fulfill its mandate, the South Coast AQMD has developed a number of new rules and programs in conjunction with additional fees to cover these expanded regulatory costs. For example, Rule 1480 (adopted December 6, 2019), requires monitoring and sampling by owners or operators of designated Metal TAC Monitoring Facilities. Pursuant to the rule, these activities may be subject to fees associated with the preparation of Alternative Monitoring and Sampling Plans (See Rule 306). Additionally, in May 2018, the Governing Board adopted fees to cover the costs of work performed in conjunction with the transition of facilities out of the RECLAIM program in accordance with Regulation XX and Regulation XI.

There is no indication that the Governing Board intended to adopt these fees but forego annual CPI adjustments. Indeed, in the years since 2010, the Governing Board has increased most fees in Regulation III by CPI, regardless of when they were adopted, under both Rule 320 and the H&SC.

Staff is proposing to streamline and clarify future CPI adjustments by Rule 320 to provide for automatic CPI adjustments of most South Coast AQMD fees regardless of when they were adopted. Staff is also proposing to amend Rule 320 to clarify that these automatic adjustments would not occur when the fee rate is set by state law or another rule. Under these amendments, the Governing Board would retain the ability to adopt a rule in any specific year that would forego the CPI adjustments.

Proposed Amended Rule(s)

Rule 320 (b) Applicability

(b) Applicability

Effective July 1 of each calendar year after October 29, 2010, each fee set forth in Regulation III ~~as of October 29, 2010~~ shall be automatically adjusted by the change in the California Consumer Price Index for the preceding calendar year, as defined in Health and Safety Code §40500.1(a).

(c) Exceptions

(3) The provisions of subdivision (b) shall not apply to any fee for which the rate is set by state law or a specific rule that precludes such automatic adjustments.

Justification/Necessity/Equity

The proposed amendment is necessary to clarify the intent and applicability of Rule 320.

The California CPI is determined by the Department of Industrial Relations and is a price index of the price of a weighted average market basket of consumer goods and services typically purchased by specific households. CPI tracks the change of inflation over time. Rule 320 provides for an automatic adjustment of most South Coast AQMD fees based on the percent increase in the California CPI from the previous year. These adjustments are authorized pursuant to both Rule 320 and the H&SC. However, because the language of Rule 320 specifies only fees adopted “as of” October 29, 2010, it is necessary to provide clarification of the Rule to apply its automatic adjustments to fees adopted after that date. For instance, in the years since 2010, South Coast AQMD has raised or imposed fees relating to monitoring and sampling at Metal TAC Monitoring Facilities (see Rule 301 subdivision (ac)), and TAC cancer potency weighted fees, base toxic fees, and device fees (see Rule 301 paragraph (e)(7)). These fees could have been automatically adjusted or increased pursuant to the authority set forth in the H&SC. However, these and a small handful of other fees adopted after October 29, 2010, have not been CPI adjusted. In order to ensure consistency and avoid confusion, staff proposes that they be automatically adjusted under a streamlined version of Rule 320 that will affect most fees regardless of when they were adopted. Pursuant to Proposition 26, a charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof would not be considered a “tax,” which Proposition 26 defines as any levy, charge, or exaction of any kind. Authorizing automatic adjustments in fees based on the California CPI from the previous year would be considered a reasonable regulatory cost and would not be defined as a tax pursuant to Proposition 26.

The California CPI reflects a decline in the purchasing power of the dollar. South Coast AQMD fees support the agency’s regulatory program as set forth in the annual budget and work program adopted each year. Adjusting the District’s fees for CPI maintains the same fee value over time by accounting for the change in purchasing power of the dollar. By design, an increase based on CPI is reasonable because it recovers the increase in South Coast AQMD’s costs as a result of inflation.

Over the past decade, the costs of the District’s programs supported by fees on stationary sources has increased by approximately 39.4% for non-Title V facilities and 63.4% for Title V facilities, whereas the CPI has increased by approximately 31.4%. As established when Rule 320 was initially adopted, these fees are necessary to: 1) meet operating expenses, including employee wage rates and fringe benefits; 2) purchase or lease supplies, equipment, or materials; 3) meet financial reserve needs and requirements; and 4) obtain funds for capital projects, necessary to maintain service within existing service areas. In order to maintain South Coast AQMD’s existing programs and reserves, it is necessary to adjust fees to account for changes in CPI and to maintain funds to provide for capital expenditures that may become necessary in the future.

Current costs include those related to the South Coast AQMD’s office building, which is headquartered in Diamond Bar, California, its satellite office located in Long Beach, California, monitoring stations throughout its jurisdictional boundaries, and utilities, including electricity as provided by Southern California Edison, gas which is provided by the Southern California Gas Company, water provided by Walnut Valley Water District, and disposal provided by Waste Management. South Coast AQMD fleet vehicles are currently provided by Enterprise Fleet

Management, property insurance and health insurance brokerage services are currently provided by Alliant, and building services (e.g., janitorial services, landscaping service, security guard service, building maintenance, etc.) are almost entirely provided by companies operating within California. Additionally, most services, contractors, and purchase orders providers are based in California, such as recruitment services, workers compensation services, consulting services, software providers, and supply providers. The fees and contract rates associated with these providers increase per year or when the contract renews. In addition, the cost to employ staff at the South Coast AQMD increases over time due to increases in compensation, modifications to the employer contribution for defined benefits, and increases to healthcare and retirement benefits.

As the bulk of South Coast AQMD expenditures are within California, it is necessary to increase post-2010 fees to maintain with the rate of California inflation. In addition, the increased costs bear a fair and reasonable relationship to the burdens on South Coast AQMD's activities as established by the underlying fee schedule.

Staff is also proposing to amend Rule 320 to clarify that automatic adjustments would not occur where the fee rate is set by state law or another rule. These fees would be excluded from automatic CPI adjustments as they are either determined independent of CPI or adjusted at a different frequency. The fees to be excluded from the automatic CPI increase are listed in Table 2-1.

2. RULE 301 AND RULE 306 PERMITTING PROGRAM PROCESSING AND ANNUAL RENEWAL FEE INCREASES

Description of Proposed Amendment

Under H&SC Section 42300, South Coast AQMD may adopt and implement a program requiring that a permit to construct and to operate must be obtained before the construction or operation of any equipment which emits or controls air pollution within South Coast AQMD's jurisdictional boundaries. South Coast AQMD has assessed fees for processing of applications under the permitting program for many years, and the fees have traditionally been based on the type of equipment and complexity of engineering review. Permit processing fees are authorized pursuant to state law to recover the reasonable regulatory costs of the agency's permit program (H&SC Section 40510(b)). These fees support the permit processing program and fee rate schedules for different categories of equipment are based on the average time it takes to process and issue a permit. Permit processing fees partially recover the costs for evaluation of an application and issuance of a permit.

The H&SC also authorizes South Coast AQMD to have an annual permit renewal program and authorizes fees to recover the costs of the program (H&SC Section 42300(b); 40510(b)). The annual operating permit renewal program, initiated by South Coast AQMD in February 1977, requires that all active permits be renewed on an annual basis upon payment of annual renewal fees. The permits help to ensure that equipment located in South Coast AQMD's jurisdictional boundaries are in compliance with South Coast AQMD Rules and Regulations and annual operating permit renewal fees are intended to recover, in part, the regulatory costs of the Permitted Source Program, such as compliance and permit evaluation, as well as monitoring and testing.

In September 2016, U.S. EPA Region IX issued a report finding that revenues from South Coast AQMD's Title V Program as implemented pursuant to Regulation XXX – Title V Permits did not adequately cover program costs as required pursuant to federal Clean Air Act Section 504 (b)(3)(i)

and Code of Federal Regulations, Title 40, Part 70. In response, the District performed a cost recovery analysis indicating that, for fiscal year 2017-18 *alone*, the Title V program would have a shortfall of 32%. In response to this shortfall, the Governing Board approved a 16% fee increase in each of the following two fiscal years. This increase was intended to recover program expenditures, including permit processing, compliance, legal and planning review, in addition to costs expended by other departments in support of the Title V program. At the same time, the Governing Board also approved a 4% increase in permit processing and annual operating permit fees for non-Title V facilities in the each of the following two fiscal years. Costs supported by these fees were set forth in Appendix C 2 of the June 2017 Regulation III Board Package.²³ Notably, even with these fee increases, the District acknowledged that permit processing fees would still not cover the shortfall.

In the years since 2017, circumstances have changed. South Coast AQMD's permit application inventory consists of various applications for permits, plans, registrations, and administrative revisions. Recently the permit application inventory has increased due to a number of reasons, including higher staff turnover notably driven by a large number of more experienced senior level staff retirements in the Engineering and Permitting division, increasing complexities added to the permit processing program, and an increased number of permit applications. Permit processing efforts will continue to become more complex and labor-intensive given rules recently adopted or amended include compliance timelines between 2022 to 2031, additional future rule development efforts, and the transition of the RECLAIM program. In short, it is anticipated that the permitting program workload will continue to increase and serve as an ongoing issue unless additional resources are allocated to timely process permit applications while ensuring compliance with new and expanded rules.

Due to the additional resources needed to address the increasing permit processing workload and compliance demands, staff is proposing an increase of permit processing and annual renewal fees by 4% beyond the increase in the California CPI which, per the requirements of the H&SC, will be phased in over the next two fiscal years. These fees would increase by 2% in fiscal year 2023-24 and an additional 2% in fiscal year 2024-25, in addition to the annual CPI adjustments, unless the Governing Board elects to forego a CPI adjustment in any one of those years. For the purposes of this proposed amendment, permit processing, annual renewal, and plan processing fees primarily include application fees for new permits, modification/alteration/change of existing permits, annual renewals, and plan processing. It does not include emissions or emissions-related fees, which are to be increased by the CPI only.

²³ See South Coast AQMD Governing Board Agenda (June 2017), <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2017/2017-jun2-028.pdf>.

Calculating the Fee Increase:

Additional fee rate increases above California CPI for Permit Processing Fees and Annual Renewal Fees, in each of the next two fiscal years, are calculated as follow:

For Fiscal Year 2023-24:

- Permit Processing, Annual Renewal, and Plan Processing Fees:
Fiscal Year 2022-23 Fee \times 5.6% CPI Rate Increase \times 2% Fee Rate Increase = Fiscal Year 2023-24 Fee (rounded to the nearest cent)

Example: Rule 301 subparagraph (c)(1)(I) – Standard Streamline Permits
 $\$1,071.94 \times 1.056 \times 1.02 = \$1,154.608 = \$1,154.61$

For Fiscal Year 2024-25 and thereafter²⁴:

- Permit Processing, Annual Renewal, and Plan Processing Fees:
Fiscal Year 2023-24 Fee \times Applicable Percent CPI Rate Increase²⁵ \times 2% Fee Rate Increase = Fiscal Year 2024-25 Fee (rounded to the nearest cent)

Example: Rule 301 subparagraph (c)(1)(I) – Standard Streamline Permits
 $\$1,154.61 \times 1.02 = \$1,777.700 = \$1,777.70$ ²⁵

Proposed Amended Rule(s)

The following tables summarize specific permitting program processing and annual operating renewal fees that would be subject to the additional Permit Program Processing Fees percent increase and Annual Renewal Fees percent increase, phased in over two years (H&SC Section 40510.5(b)):

Table 3-2
Permitting Program Processing Fees

Rule	Description
301 (c)(1)(A)(i)	Permit Processing Fee
301 (c)(1)(A)(ii)	Permits for Relocation
301 (c)(1)(C)(i)	Fee for Failing to Obtain a Permit
301 (c)(1)(D)	Small Business Fees
301 (c)(1)(E)	Fees for Permit Processing for Identical Equipment and Processing of Applications for Short Term Emission Reduction Credits

²⁴ This fee will likely be slightly higher due to the action of Rule 320, which will automatically increase most fiscal year 2023-24 fees in Regulation III by the change in the calendar year California CPI (unless the Governing Board elects to forgo or modify the rate). The amount of this change is unknown until February 2024 and therefore, cannot be included in this fee calculation.

²⁵ The “Applicable Percent CPI Rate Increase” used for fiscal year 2024-25 will not be available from the California Department of Industrial Relations until the middle of February of 2024 and the South Coast AQMD Governing Board may elect to forego a CPI adjustment in any year.

Table 3-2 Continued

Rule	Description
301 (c)(1)(I)	Standard Streamlined Permits
301 (c)(2)	Fee for Change of Owner/Operator or Additional Operator
301 (c)(3)	Change of Operating Condition, Alteration/Modification/Addition
301 (c)(4)	Fee for Evaluation of Applications for Emission Reductions
301 (c)(5)	Fees for Retirement of Short Term Emission Reduction Credits for Transfer into Rule 2202, and for ERCs Transfer Out of Rule 2202
301 (c)(6)(A)	Application Cancellation Fee
301 (g)	Reinstating Expired Applications or Permits; Surcharge
301 (j)(4)	Payment for Public Notice
301 (j)(7)	Fees for Inter-basin, Inter-district, or Interpollutant Transfers of ERCs
301 (l)(3)	Facility Permit Fees (RECLAIM)
301 (l)(4)	Facility Permit Amendment (RECLAIM)
301 (l)(5)	Change of Operating Condition
301 (l)(6)	Fee for Change of Owner/Operator
301 (l)(8)	Transaction Registration Fee (RECLAIM)
301 (l)(10)	Breakdown Emission Report valuation Fee (RECLAIM)
301 (l)(12)	Mitigation of Non-Tradeable Allocation Credits (RECLAIM)
301 (l)(13)	Evaluation Fee to Increase an Annual Allocation (RECLAIM)
301 (l)(14)	Facility Permit Reissuance Fee for Facilities Exiting RECLAIM (RECLAIM)
301 (l)(15)	Optional Conversion of Transitioned RECLAIM Facility Permit (RECLAIM)
301 (m)(3)(A)	Permit Processing Fees for Existing Facilities with Existing District Permits Applying for an Initial Title V Permit (Title V)
301 (m)(3)(B)	Permit Processing Fees for Existing Facilities with Existing District Permits Applying for a Final Title V Permit (Title V)
301 (m)(3)(C)	Revision to Title V Facility Permit
301 (m)(3)(D)	New Title V Facility Permit to Construct
301 (m)(3)(E)	Existing Title V Facility Permit Due to Modification
301 (m)(4)	Permit Revision Fee (Title V)
301 (m)(5)	Renewal Fees (Title V)

Table 3-2 Continued

Rule	Description
301 (m)(7)	Public Hearing Fees (Title V)
301 (n)(3)	Facility Permit Revision
301 (n)(5)	Fee for Change of Operator (Facility Permit)
301 (u)(1)	Initial Filing Fee (Non-permitted Emission Sources Subject to Rule 222)
301 (u)(2)	Change of Owner/Operator or Location (Non-permitted Emission Sources Subject to Rule 222)
301 (v)(1)	Fees for Expedited Processing Requests (Non-Title V Maximum Added Base Cap Fee and Title V Maximum Added Base Cap Fee)
301 Table Fee Rate-A (Schedules A – H) - Summary Permit Fee Rates	Permit Processing, Change of Conditions, Alteration/Modification
301 Table Fee Rate-B (Schedule I)	Summary of ERC Processing Rates
301 Table Fee Rate-C	Summary of Permit Fee Rates Change of Operator
301 Table VII	Facility Permit Fees
306 (c)	Plan Filing Fee
306 (d)	Plan Evaluation Fee
306 (e)	Duplicate Plan Fee
306 (f)	Inspection Fee (Plans)
306 (g)	Change of Condition Fee (Plans)
306 (i)(1)	Plan Filing and Plan Evaluation Fees
306 (l)	Plan Application Cancellation Fee
306 (m)	Protocol/Report Evaluation Fees
306 (q)	Optional Expedited Protocol/Report Evaluation Processing Fee
306 (r)(1)	Regulation XXVII – Fees for Rule 2701
306 (r)(2)	Regulation XXVII – Fees for Rule 2702

**Table 3-3
Annual Renewal Fees**

Rule	Description
301 (d)(2)	Annual Operating Fees
301 (d)(4)	Renewal of Temporary Permit to Operate New Equipment
301 (d)(5)	Renewal of Temporary Permit to Operate Existing Equipment
301 (l)(7)(B)	Annual Operating Permit Renewal Fee
301 (l)(8)	Transaction Registration Fee (RECLAIM)
301 (m)(5)	Renewal Fees (Title V)
301 (u)(3)	Annual Renewal Fee (Non-permitted Emission Sources Subject to Rule 222)
306 (h)	Annual Review/Renewal Fee (Plans)

These fees may also be adjusted by the calendar year 2022 California CPI percent increase for fiscal year 2023-24.

Justification/Necessity/Equity

Recent measures implemented to address the current resourcing shortfall include, but not limited to:

- Staff working overtime hours on inventory reduction projects,
- Staff resource sharing across teams and divisions,
- Temporary assignments of recent retirees,
- Hiring external contractors,
- Staff working out of class assignments,
- Onboarding of over 20 new engineers,
- Ongoing engineer recruitment,
- Ongoing promotional efforts at all levels,
- Streamlining of permits,
- Expanded use of teleworking, and
- Additional technical and developmental training.

Despite these efforts, over the past year, the pending application inventory has increased and the workload is expected to further increase in the coming years. The current pending application inventory is approximately 4,680 pending applications as of March 15, 2023 and the recent number of incoming applications has increased by 11% from 2021 to 2022. There are several upcoming factors that are expected to increase the resources needed to implement the permitting program. These upcoming factors include the efforts to transition facilities out of the RECLAIM program and implement the RECLAIM landing rules,²⁶ further rule development to achieve attainment with

²⁶ Rules 1109.1, 1110.2, 1117, 1118.1, 1134, 1135, 1146, 1146.1, 1146.2, 1147, 1147.1, 1147.2, 1150.3, and 1179.1

the National Ambient Air Quality Standards (NAAQS) as outlined in the 2022 Air Quality Management Plan (AQMP),²⁷ further development of toxic rules, potential implementation of United States Environmental Protection Agency (U.S. EPA) recommendations regarding Title VI and other environmental justice related concerns, and to further handle the accompanying increasing complexity of adopted and amended requirements needed to meet these ever-increasing obligations and responsibilities of South Coast AQMD.

In order to process permits in a timely and efficient manner, a number of additional full-time equivalent (FTE) staff above the current capacity are needed. Based on the resources needed in the past year to implement the recently adopted/amended rules and the hiring of recent retirees and external contractors, it is estimated that approximately 14.3 additional FTE staff will be needed. The 14.3 additional FTE staff will consist of 10 FTE at a non-senior staff level and 4.3 at a senior staff level. Nine of the 10 FTE staff at non-senior staff levels were approximated using the BARCT workload projections. The remaining one FTE staff at non-senior staff level and the 4.3 FTE staff at senior staff level were based on the current practice to have one senior staff per five non-senior staff, and the hours of external contractors and recent retirees assisting with permit processing. The additional resources represent the staff needed to implement rule requirements through issuance and implementation of permits. It is important to note that this estimate of the FTE staff increase is conservative as South Coast AQMD faces – and will continue to face – numerous challenges that will impact the Engineering and Permitting division in the years to come, including increasing permit complexity, increasing quantity of permit applications, implementation of the RECLAIM landing rules, implementation from further development of BARCT rules to address requirements in Assembly Bill 617 and in the 2016 AQMP, implementation resulting from further development of toxics rules to address revised and future revised health risk values, and implementation of control measures committed to in the 2022 AQMP. As such, although the recently adopted/amended rules implementing BARCT requirements in Assembly Bill 617 and 2016 AQMP have compliance timeframes from 2022 to 2031, the South Coast AQMD has constant long-term needs which will not be resolved by 2031. In short, the need for additional FTEs will not only address short-term issues facing the District but will also address concerns and issues extending into future years.

To convert these estimated additional resources to an annual cost burden, the current fully burdened expenditure is used. Using fully burdened expenditures of \$231,712 and \$247,603 for an Air Quality Engineer II and a Senior Air Quality Engineer, respectively, the fee impact is estimated to be approximately \$3.4 million in fiscal year 2023-2024 and the years after. The burdened expenditure used in this estimation is conservative as it is anticipated that future staff salary in calendar year 2024 will likely increase the fully burdened expenditure in the second half of fiscal year 2023-24. As such, it is proposed to increase permit processing and annual operating fees, by an additional 4% beyond the California CPI percent increase. As demonstrated in Chapter 5 Impact Assessment of this Staff Report, this proposal is estimated to generate approximately \$1.74 million in fiscal year 2023-24 and \$3.47 million in fiscal year 2024-25 and the years after based on the estimation of additional revenue from permit applications and renewals. The proposed permit processing, annual renewal, and plan processing fees increase is necessary to provide specific regulatory cost recovery for the additional resources needed to implement rule requirements through issuance and implementation of permits. The fee increase is no more than

²⁷ South Coast AQMD, Final 2022 AQMP. <http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2022-air-quality-management-plan/final-2022-aqmp/final-2022-aqmp.pdf>

necessary to cover the Permitted Source Program's increased regulatory costs. It is fair and reasonable to allocate those increased costs by increasing all permit processing, renewal, and plan processing fees by the same percentage given those underlying fees were set based on the associated regulatory burden, and because existing and new staff will all work to cover the Permitted Source Program's needs. Notably, the estimate of FTE staff needed is a conservative one – based primarily on the resources required to implement updated BARCT requirements. Additional rule requirements from future BARCT rules, in addition to ongoing and anticipated amendments to Rule 1401 and other toxics rules, will certainly require additional resources not reflected in this request.

The 4% increase will be phased in over the next two fiscal years. These fees would increase by 2% in fiscal year 2023-24 and an additional 2% in fiscal year 2024-25, in addition to annual CPI adjustments, unless the Governing Board elects to forego a CPI adjustment in any one of those years. Given only 50% of the anticipated resources would be collected by the end of fiscal year 2023-24, it is proposed that the new staff positions supported by this proposal will be created through a phase-in approach, with four Air Quality Engineers and two Senior Air Quality Engineer proposed in fiscal year 2023-24. These additional resources are proposed to be added to the Engineering and Permitting division and to the Source Testing unit to address the increased application processing workload. The remaining resources will be allocated in fiscal year 2024-25 and fiscal year 2025-26, after the proposed fee increase is fully implemented and after the revenue is available, respectively, and based on the resources needed to implement rule requirements through issuance and implementation of permits. The increased fees to sustainably maintain the pending application inventory will be allocated across permitting and annual operating fee schedules.

**CHAPTER 4: PROPOSED RULE AMENDMENTS WITH NO FEE IMPACTS
AND/OR ADMINISTRATIVE CHANGES**

INTRODUCTION

RULE 307.1 ADMINISTRATIVE CHANGES

ADD RULE 1460 CONTROL OF PARTICULATE EMISSIONS
FROM METAL RECYCLING AND SHREDDING OPERATIONS
AS A TYPE OF PLAN SUBJECT TO RULE 306 PLAN
EVALUATION FEES

RELOCATION AND UPDATE OF REFUNDS ASSOCIATED
WITH APPLICATION CANCELLATIONS FROM RULE 313 TO
RULE 301

RULE 301 ANNUAL EMISSION REPORT FEE
CLARIFICATION

INTRODUCTION

The proposed rule amendments in this section do not have fee impacts. Rather, the proposed amendments in this chapter generally include administrative changes, including clarifications, deletions, re-numbering, and corrections to existing rule language. The following four proposals are being proposed with no fee impacts:

- 1) Amend Rule 307.1 – Alternative Fees for Air Toxics Emissions Inventory by incorporating several administrative changes to improve consistency with other rules and rule legibility,
- 2) Amend Rule 306 – Plan Fees to clarify the fee, already required by Rule 1460 – Control of Particulate Emissions from Metal Recycling and Shredding Operations subdivision (k), a Metal Recycling or Metal Shredding Facility is required to pay when submitting or updating the registration form,
- 3) Amend Rule 301 – Permitting and Associated Fees and Rule 313 – Authority to Adjust Fees by clarifying the existing rule language regarding refunds associated with application cancellations and relocating this rule language from Rule 313 to Rule 301, and
- 4) Amend Rule 301 to further clarify the Annual Emission Reporting threshold values in Rule 301 Table III – Emission Fees.

The proposed rule amendments for these four proposals are discussed in more detail below. Any additional amendments that represent renumbering of rule sections/tables, amendments that are due solely to any proposed addition and/or deletion of preceding rule sections/tables, are not separately listed below. Finally, where appropriate, all of the amended fee rates shown below do not reflect the 5.6% increase in the California CPI from 2021 to 2022 and will increase by this percent should the Governing Board adopt the annual CPI increase.

1. RULE 307.1 ADMINISTRATIVE CHANGES

Description of Proposed Amendment

Staff is proposing several administrative changes to Rule 307.1. The administrative changes include updating SCAQMD to South Coast AQMD and correcting capitalization, spacing, and alignment issues.

Proposed Amended Rule(s)

Rule 307.1 (c)(6) Diesel Particulate Matter

(c) Definitions

- (6) Diesel Particulate Matter (PM) as defined in Rule 1470

Rule 307.1 (c)(8)(A) District Tracking Facility

(c) Definitions

(8) DISTRICT TRACKING FACILITY means a facility:

(A) That has been prioritized by the District in accordance with Health and Safety Code Section 44360(a) using procedures that have undergone public review and that are consistent with the procedures presented in the most current version of the South Coast AQMD “Facility Prioritization Procedures For AB 2588 Program”, which is incorporated by reference herein;

Rule 307.1 (c)(12) District Tracking Facility

(c) Definitions

(12) HRA TRACKING FACILITY means a facility that has been prioritized by the District in accordance with Health and Safety Code Section 44360(a) using procedures that have undergone public review and that are consistent with the procedures presented in the most current version of the South Coast AQMD “Facility Prioritization Procedures For AB 2588 Program”, which is incorporated by reference herein, and the greater of the facility’s prioritization scores for cancer and non-cancer health effects is greater than 10.0, and meets either one of the following criteria:

Rule 307.1 (c)(19) Prioritization Score Greater than Ten Facility

(c) Definitions

(19) PRIORITIZATION SCORE GREATER THAN TEN (10.0) FACILITY means a facility that does not have an approved health risk assessment and has been prioritized by the District in accordance with Health and Safety Code Section 44360(a) using procedures that have undergone public review and that are consistent with the procedures presented in the most current version of the South Coast AQMD “Facility Prioritization Procedures For AB 2588 Program”, which is incorporated by reference herein, and the greater of the facility’s prioritization scores for cancer and non-cancer effects is greater than 10.0.

Rule 307.1 (c)(28) State Costs

(c) Definitions

- (28) STATE COSTS means the reasonable anticipated cost which will be incurred by the CARB and OEHHA to implement and administer the Act, as shown in the District staff report.

Rule 307.1 (c)(29) State Industry-Wide Facility

(c) Definitions

- (29) STATE INDUSTRY-WIDE FACILITY means a facility that (1) qualifies to be included in an industry-wide emission inventory prepared by the District pursuant to Health and Safety Code Section 44323, (2) releases, or has the potential to release, less than ten tons per year of each criteria pollutant, and (3) is either of the following:

- (A) A facility in one of the following four classes of facilities: autobody shops, as described by NAICS Codes 441110 or 811121; gasoline stations, as described by NAICS Codes 447110 and 447190; dry cleaners, as described by NAICS Code 812320; and printing and publishing, as described by NAICS Codes 323111 through 323117 or 511110 through 511199; or

Rule 307.1 (c)(32) Unprioritized Facility

(c) Definitions

- (32) UNPRIORITIZED FACILITY means a facility that has not been prioritized by the District in accordance with Health and Safety Code Section 44360(a) using procedures that have undergone public review and that are consistent with the procedures presented in the most current version of the South Coast AQMD “Facility Prioritization Procedures For AB 2588 Program”, which is incorporated by reference herein

Rule 307.1 (d)(9) Potentially High Risk Level Facility Fees

(d) Fees

(9) Exemptions

- A facility shall be exempt from paying fees if, by July 1 of the applicable Fiscal Year, any one or more of the following criteria are met:

- (A) The facility has been prioritized by the District in accordance with Health and Safety Code Section 44360(a) using procedures that have undergone public review, and the facility’s prioritization score is less than or equal to 1.0 for both cancer and non-cancer health effects. The procedure for estimating priority of facilities were developed based on the most current approved version of South Coast AQMD “Facility Prioritization Procedures For AB 2588 Program”, which is incorporated by reference herein.
- (B) The facility had its health risk assessment approved by the District in accordance with Health and Safety Code Section 44362 and the risk assessment results show a total potential cancer risk, summed across all pathways of exposure and all compounds, of less than one case per one million persons and a total hazard index for each toxicological endpoint, both acute and chronic, of less than 0.1. Some appropriate procedures for determining potential cancer risk and total hazard index are presented in the most current approved version of the OEHHA “Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments” and South Coast AQMD “Supplemental Guidelines for Preparation of Health Risk Assessments for the Air Toxics “Hot Spots” Information and Assessment Act”, which are incorporated by reference herein.

Justification/Necessity/Equity

This proposal includes several administrative changes to improve consistency with other rules and rule legibility.

2. CLARIFY RULE 1460 CONTROL OF PARTICULATE EMISSIONS FROM METAL RECYCLING AND SHREDDING OPERATIONS AS A TYPE OF PLAN SUBJECT TO RULE 306 PLAN EVALUATION FEES

Description of Proposed Amendment

Rule 1460, adopted November 2022, includes a onetime registration requirement for a Metal Recycling or Metal Shredding Facility. However, a facility is required to submit an updated registration form to South Coast AQMD if there are changes to facility information as specified in Rule 1460 (e.g., changes in ownership, throughput tier, etc.). Rule 1460 subdivision (k) currently specifies the fee for submitting a registration or update registration form by referencing the plan filing fee pursuant to Rule 306. Staff is proposing to further clarify the precise fee required by including Rule 1460 in Rule 306 paragraph (i)(l) schedule B for the payment of fees.

Proposed Amended Rule(s)**Rule 306 (i)(1) Payment of Fees**

(i) Payment of Fees

(1) Plan Filing and Plan Evaluation Fees

In addition to payment of the filing fee pursuant to subdivision (c), the initial payment for plan evaluation fees shall be as shown in the table below in this subparagraph and paid at the time of filing. The adjustment to plan evaluation fees will be determined at the time a plan is approved or rejected and may include additional fees based upon actual review and work time billed at a rate pursuant to subdivision (d). Notification of the amount due or refund will be provided to the applicant, and any additional fees due to the adjustment to plan evaluation fees will be billed following project completion.

A – Rule 403 and 461 Plans and Rule 1166 Various Location Plans	Non-Title V	Title V
FY 2019-20 and thereafter	\$179.52	\$224.97
B – Rule 444, 1133, and 1415, <u>and</u> 1460 Plans	See Rule 306 (c)	See Rule 306 (c)
C – All Other Plans, including Rule 1166 Fixed Site Plans	Non-Title V	Title V
FY 2019-20 and thereafter	\$628.36	\$787.39

The fees presented in this Proposed Amended Rule(s) section do not reflect the 5.6% increase in the California CPI from 2021 to 2022 and will increase by this percent should the Governing Board adopt the annual CPI increase.

Justification/Necessity/Equity

Although Rule 1460 includes a reference to Rule 306 for registration fees, currently Rule 306 does not list specific fees for cost recovery by South Coast AQMD when a Metal Recycling or Metal Shredding Facility submits or updates a registration form. The amendment is necessary to clarify the fee a Rule 1460 facility is required to pay when submitting or updating the registration form.

These fees are necessary to recover reasonable and actual costs incurred by South Coast AQMD for the preparation and evaluation of the registration forms for all Metal Recycling and Metal Shredding Facilities in the South Coast AQMD’s jurisdictional boundaries. The justification of the preparation fees for the registration form were analyzed in Chapter 3 of the Staff Report prepared

for the November 2022 adoption of Rule 1460. Specifically, the Staff Report stated that “[u]nder subdivision (k) provisions [of Rule 1460], facilities submitting a registration or an update will be subject to a Plan Filing Fee pursuant to subdivision (c) of Rule 306.”

The fee amount is based on a similar facility registration program required by Rule 1133, which is also included in Rule 306 paragraph (i)(1) schedule B for the payment of fees. Only facilities subject to the registration requirements in Rule 1460 would be subject to the plan filing fee. A fee is already required by Rule 1460 subdivision (k) and amending Rule 306 will provide clarification on which fee is being referenced in this subdivision.

3. RELOCATION AND UPDATE OF REFUNDS ASSOCIATED WITH APPLICATION CANCELLATIONS FROM RULE 313 TO RULE 301

Description of Proposed Amendment

Currently, refunds for fees paid to the South Coast AQMD for the processing of a permit application, equipment registration, or plan shall be in accordance with Rule 301. Staff is proposing to move the existing rule language on refunds associated with application cancellations from Rule 313 to Rule 301 and to incorporate several clarifications. Applications may be cancelled at several stages in the permitting process. If an initial application submittal is clearly lacking in completeness, it is rejected by South Coast AQMD, with all fees refunded. Once an application is prescreened and “deemed complete,” it may no longer be rejected by South Coast AQMD. If an applicant no longer desires to seek a permit for an application that has been “deemed complete,” they generally must request a cancellation. The application cancellation funds cover administrative costs associated with creating, prescreening, and cancelling the application. The amount of funds returned to the applicant is dependent on the engineering evaluation work performed prior to the time the cancellation is received. If no engineering evaluation work beyond the application prescreening has been initiated at the time the cancellation is received, only the cancellation fee will be retained and the remaining application processing fee will be refunded. If any engineering evaluation work beyond the application prescreening has been initiated at the time the cancellation is received, the entire application fee will be retained, and no refunds are issued.

There are several clarifications proposed for the relocated rule language on refunds associated with application cancellations. Rule 301 subparagraph (c)(6)(A) will no longer include the language “or the permit fee set forth in the Summary Permit Fee Rates tables in Rule 301, whichever is less.” Rule 301 subparagraph (c)(6)(B) is proposed to no longer include the word “pursuant” nor include references to plans or a permit to construct and to change the reference from Rule 313 paragraph (h)(1) to Rule 301 subparagraph (c)(6)(A). Rule 301 subparagraphs (c)(6)(C) and (c)(6)(D) are proposed to include “if the application is cancelled”

Proposed Amended Rule(s)

Rule 313 (h) Refunds

~~(h) Refunds~~

- ~~(1) If an application for a permit to construct is canceled, permit processing fees, less the application cancellation fee, will be refunded if the permit evaluation has not been initiated by the District. The application cancellation fee will be \$249.06, or~~

~~the permit fee set forth in the Summary Permit Fee Rates tables in Rule 301, whichever is less.~~

- ~~(2) — Any fee paid to the District pursuant to process a permit application, equipment registration, or plan shall be refunded upon finding by the Executive Officer that the District erroneously requested filing of the application, registration, or plan. The cancellation fee required in paragraph (h)(1) shall not apply when the application for a permit to construct was filed based on an erroneous District request.~~
- ~~(3) — If a facility or equipment is operated in violation of District Rules or Regulations during any portion of the time period for which the fee was assessed, there shall be no refund.~~
- ~~(4) — Applications filed for a Permit to Operate for equipment which has been operating without a required District permit will not receive a refund.~~

~~(h)~~ Service Charge for Returned Checks.

Unless waived for good cause by the Executive Officer, any person who submits a check to the District on insufficient funds or on instructions to stop payment, absent an overcharge or other legal entitlement to withhold payment, shall be subject to a \$25 service charge.

Rule 301 (c)(6) Refunds

(c) Fees for Permit Processing

(6) Refunds

- (A) If an application for a permit to construct is canceled, permit processing fees, less the application cancellation fee, will be refunded if the permit evaluation has not been initiated by the District. The application cancellation fee will be \$249.06.
- (B) Any fee paid to the District to process a permit application or equipment registration shall be refunded upon finding by the Executive Officer that the District erroneously requested filing of the application or registration. The

cancellation fee required in subparagraph (c)(6)(A) shall not apply when the application was filed based on an erroneous District request.

- (C) If a facility or equipment is operated in violation of District Rules or Regulations during any portion of the time period for which the fee was assessed, there shall be no refund if the application is cancelled.
- (D) Applications filed for a Permit to Operate for equipment which has been operating without a required District permit will not receive a refund if the application is cancelled.

The fees presented in this Proposed Amended Rule(s) section do not reflect the 5.6% increase in the California CPI from 2021 to 2022 and will increase by this percent should the Governing Board adopt the annual CPI increase.

Justification/Necessity/Equity

The existing rule language on refunds associated with application cancellations resides in Rule 313 which is for the Authority to Adjust Fees and Due Dates. Staff believes that relocating the existing discussion of refunds associated with application cancellations from Rule 313 to Rule 301, which is for Permitting and Associated Fees, will allow these costs to be more easily located by an applicant. Only the location of the discussion of refunds associated with application cancellations is being amended with several clarifications and the fees will remain unchanged with the exception of an annual CPI percent increase.

There are several clarifications proposed for the relocated rule language on refunds associated with application cancellations. Rule 301 subparagraph (c)(6)(A) is proposed to no longer include the language “or the permit fee set forth in the Summary Permit Fee Rates tables in Rule 301, whichever is less.” The Summary Permit Fee Rates for permits to construct are located in Table Fee Rate-A of Rule 301. The lowest fee in this table is the non-Title V schedule A/A1 fee for change of condition, currently set at \$1,071.94. With a small business discount or identical equipment discount of 50%, the lowest fee in Table Fee Rate-A would be \$535.97. As the cancellation fee of \$263.01 is lower than every potential fee in Table Fee Rate-A, there is no fee that would be less than the cancellation fee and this rule language is no longer necessary. Rule 301 subparagraph (c)(6)(B) is proposed to no longer include the word “pursuant” nor include references to plans or a permit to construct and to change the reference from Rule 313 paragraph (h)(1) to Rule 301 subparagraph (c)(6)(A). “Pursuant” is proposed not be transferred from Rule 313 to Rule 301 because it is not necessary in the rule language. Reference to plans is proposed not be transferred from Rule 313 to Rule 301 as plan application cancellation fees are already addressed in Rule 306 – Plan Fees subdivision (l). Rule 301 subparagraphs (c)(6)(C) and (c)(6)(D) are proposed to be amended to include “if the application is cancelled” to further clarify that it is only applicable to cancelled applications.

4. RULE 301 ANNUAL EMISSION REPORT FEE CLARIFICATION

Description of Proposed Amendment

Staff proposes several clarifications to the thresholds located in Table III to include emissions “equal to or greater than” the threshold values for criteria pollutants, carbon monoxide, ammonia, chlorofluorocarbons, and 1,1,1-trichloroethane.

Proposed Amended Rule(s)**Rule 301 Table III – Emission Fees** Emission Fees

TABLE III –EMISSION FEES

Annual Emissions	≥1 (lb/year)	≥200 (lb/year)	≥4 – ≤25 (ton/year)	>25 – ≤75 (ton/year)	>75 - <100 (ton/year)	≥100 (ton/year)
Organic Gases* (\$/ton)		-	\$720.43	\$1,169.70	\$1,750.91	\$1,750.91
Specific Organics** (\$/ton)		-	\$128.88	\$204.22	\$306.31	\$306.31
Nitrogen Oxides (\$/ton)		-	\$421.47	\$669.49	\$1,008.29	\$1,008.29
Sulfur Oxides (\$/ton)		-	\$499.69	\$807.78	\$1,212.77	\$1,212.77
Carbon Monoxide (\$/ton)		-	-	-	-	\$8.61
Particulate Matter (\$/ton)		-	\$550.89	\$892.66	\$1,336.55	\$1,336.55
Ammonia (\$/lb)		\$0.04	\$0.04	\$0.04	\$0.04	\$0.04
Chlorofluorocarbons (\$/lb)	\$0.47	\$0.47	\$0.47	\$0.47	\$0.47	\$0.47
1,1,1-trichloroethane (\$/lb)	\$0.06	\$0.06	\$0.06	\$0.06	\$0.06	\$0.06

* Excluding methane, and exempt compounds as defined in Rule 102, and specific organic gases as specified in paragraph defined in subdivision (b) of this rule.

** See specific organic gases as defined in subdivision (b) of this rule.

The fees presented in this Proposed Amended Rule(s) section do not reflect the 5.6% increase in the California CPI from 2021 to 2022 and will increase by this percent should the Governing Board adopt the annual CPI increase.

Justification/Necessity/Equity

Emission fee thresholds listed in other sections of Rule 301 (e.g., the Rule 301 paragraph (e)(5) emission fee thresholds) specify if the emissions are greater than or equal to the threshold values listed, which is consistent with how the South Coast AQMD Annual Emission Reporting tool functions. The values in Table III of Rule 301 currently only specify if the emissions are greater than or less than the threshold values and do not address equivalent emissions to the threshold values. Updates for emission values equivalent with the threshold values were incorporated into Table III to clarify which emission fee should apply when an emission value is equivalent to a threshold value.

CHAPTER 5 – IMPACT ASSESSMENT

FISCAL IMPACT FOR SOUTH COAST AQMD
CALIFORNIA ENVIRONMENTAL QUALITY ACT
SOCIOECONOMIC IMPACT ASSESSMENT

FISCAL IMPACT FOR SOUTH COAST AQMD

The fiscal impacts of the proposed amendments including those impacted only by the CPI increase have been taken into consideration by the fiscal year 2023-24 budget and the related five-year projections.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15002(k) and 15061, the proposed amendments to Regulation III which involve charges by public agencies for the purpose of meeting operating expenses and financial reserve needs and requirements are statutorily exempt from CEQA pursuant to CEQA Guidelines Section 15273. In addition, the proposed amendments to Regulation III which have no fee impact and are strictly administrative in nature, are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3). A Notice of Exemption will be prepared pursuant to CEQA Guidelines Section 15062, and if the proposed project is approved, the Notice of Exemption will be filed for posting with the State Clearinghouse of the Governor's Office of Planning and Research, and with the county clerks of Los Angeles, Orange, Riverside, and San Bernardino counties.

SOCIOECONOMIC IMPACT ASSESSMENT

A socioeconomic analysis was conducted to assess the potential impacts of Proposed Amended Regulation III. This assessment provides an analysis of the proposed amendments to Regulation III with fee impacts other than the impacts of the automatic CPI-based fee rate increase authorized under the existing Rule 320.²⁸ It includes the estimated fee impacts by proposed amendments and by industry. South Coast AQMD is required to undertake socioeconomic impact assessments by H&SC Sections 40440.8 and 40728.5 for proposed rules and rule amendments that "will significantly affect air quality or emissions limitations." Although Proposed Amended Regulation III does not satisfy this criterion, the analysis herein is presented to provide further information to the Governing Board and stakeholders on the impacts of Proposed Amended Regulation III.

Projected Costs of Proposed Amendments with Fee Impacts

There are two proposed amendments with potential fee impacts. As presented in Table 5-1, the total fee impact is estimated to be about \$1.91 million in fiscal year 2023-24, and \$3.65 million in fiscal year 2024-25 and thereafter. In order to further examine the impact of the proposed amendments with fee impacts, this section quantifies the fee impact by each proposed amendment. All assumptions informing estimated fee impacts are discussed below.

²⁸ See *Draft Socioeconomic Report for Adjustment Based on Consumer Price Index for Regulations III – Fees*, released on March 15, 2023 and available at: http://www.aqmd.gov/docs/default-source/finance-budgets/fy-2023-24/draft-socioeconomic-assessment-for-automatic-cpi-increase_2023.pdf.

Table 5-1
Estimated Fee Impacts by Proposed Amendment and Fiscal Year

Proposed Amendment	FY 2023-24	FY 2024-25 And thereafter
Proposed Amended Rule 320: Clarify Applicability to Rules Adopted After October 29, 2010	\$175,000	\$175,000
Proposed Amended Rules 301 and 306: Increase Permit Processing and Annual Renewal Fees	\$1,736,446	\$3,472,890
Total	\$1,911,446	\$3,647,890

1. AMEND RULE 320 FOR AUTOMATIC CPI ADJUSTMENT OF MOST FEES AND CLARIFY APPLICABILITY OF THE RULE TO FEES ADOPTED AFTER OCTOBER 29, 2010

This proposal will clarify the applicability of Rule 320 and additionally authorize automatic adjustments of most fees adopted after October 29, 2010, by the percent increase in California CPI for the preceding calendar year. Based on historical fee revenues, the total additional fees collected from this proposal is estimated to be approximately \$175,000 in fiscal year 2023-2024 and years after. The fee impacts are mainly attributable to fee rate increases in sections of Rule 301 related to Fees for Toxic Air Contaminants (TAC), and in Rule 316 which specifies the fees to implement Rule 2305 – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program.

The majority of the estimated additional fees (\$154,000 or 88%) would be incurred by facilities subject to TAC fees. The Final Socioeconomic Impact Assessment for the 2019 Amended Regulation III assessed the distribution of impacts of the restructured TAC fees by industry and by small businesses.²⁹ TAC fee impacts resulting from Proposed Amended Rule 320 are expected to be similarly distributed. The manufacturing sector is expected to incur the largest impact, with the largest number of impacted facilities. Within the manufacturing sector, the petroleum and coal products manufacturing industry are expected to incur a 57% share of the overall fee impacts, primarily as a result of increased toxicity-weighted emissions fees that will be incurred by facilities in this industry. About 30% of the affected TAC facilities can be considered small businesses as they potentially qualify for access to services from the South Coast AQMD’s Small Business Assistance Office (employing 100 or fewer employees and with an annual receipt of \$5 million or less). However, they would only incur about 11% of the increased TAC fees.

²⁹ See: <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2019/2019-jun7-028.pdf>, page 242. For this analysis, a small business is defined as a facility with 100 employees or fewer and annual revenue less than or equal to \$5 million, consistent with the definition used by the South Coast AQMD Small Business Assistance Office.

Of the estimated total of \$175,000 additional fees, nearly \$16,000 (9%) is attributable to increases in Rule 316 fees related to various reporting requirements under Rule 2305.³⁰ The Final Socioeconomic Impact Assessment for Rule 2305 assessed the distributional impacts by industry and small businesses.³¹ Rule 316 fee impacts resulting from Proposed Amended Rule 320 are expected to be similarly distributed and would affect mainly the facilities in the goods-movement industries of construction, manufacturing, wholesale trade, retail trade, and transportation and warehousing. About 25% of the affected facilities can be considered as small businesses for potential access to services from the South Coast AQMD's Small Business Assistance Office. However, none of them falls under the small business definition found in the South Coast AQMD Rule 102 (employing 10 or fewer employees and earning less than \$500,000 in annual sales).

Overall, Proposed Amended Rule 320 would automatically adjust most fees for the cost of inflation. However, the fee rates in real dollar terms (i.e., net of inflation) would remain unchanged.

2. AMEND RULE 301 AND RULE 306 BY INCREASING PERMITTING PROGRAM PROCESSING AND ANNUAL RENEWAL FEES

This proposal would increase permit processing and annual renewal fees by 4% above the CPI that will be phased in over the next two years (a 2% increase in fiscal year 2023-2024 and an additional 2% increase in fiscal year 2024-2025). Please see Table 3-2 and Table 3-3 for more details.

The additional fees collected from this proposal are estimated to be \$1.74 million in 2023-2024 and \$3.47 million in fiscal year 2024-2025 and years after. These estimates are based on applying a 2% and a 2% increase, respectively, to the applicable permit processing (\$17.4 million) and annual renewal fees (\$64.82 million, excluding Rule 1180 fees, and Rule 316 Fees) estimated to be collected in fiscal year 2022-2023. The manufacturing sector is the largest contributor to South Coast AQMD's permit processing fees (37%), and annual permit renewal fees (40%) and as such this sector is expected to bear the largest share of the proposed fee increases.

Using the revenue and employment data from the Dun and Bradstreet Enterprise Database (D&B), staff has estimated that about 36% of facilities paying permit processing fees and about 50% of facilities paying annual renewal fees in fiscal year 2021-2022 would potentially qualify for South Coast AQMD's small business assistance services. However, under the South Coast AQMD Rule 102 definition, only about 22% of facilities paying permit processing fees and about 27% of facilities paying annual renewal fees in fiscal year 2021-2022 are small businesses. Table 5-2 presents distribution of the fee impacts by small businesses.

³⁰ Rules 2305 and 316 were adopted in May 2021. Although the total Rule 316 fee revenue amounted to approximately \$96,000 only in fiscal year 2021-2022, an increase in revenue is expected in subsequent years since report submittals will increase as warehouses are phased into the WAIRE program and if regulated entities submit multiple reports/notifications as necessary. The estimated impact of Proposed Amended Rule 320 is therefore based on the projected Rule 316 fee revenue in upcoming years, taking into account the universe of warehouses potentially subject to Rule 2305.

³¹ See: <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf>, page 1704.

Table 5-2
Share of Small Businesses Among Facilities Potentially Affected by Proposed Increased Permit Processing and Annual Renewal Fees

Small Business Definition	Share of Small Businesses	
	Permit Processing Fees	Annual Renewal Fees
South Coast AQMD Small Business Assistance Office	36%	50%
South Coast AQMD Rule 102	22%	27%

CHAPTER 6 – FINDINGS UNDER CALIFORNIA HEALTH AND SAFETY CODE

REQUIREMENTS TO MAKE FINDING

NECESSITY

EQUITY

AUTHORITY

CLARITY

CONSISTENCY

NON-DUPLICATION

REFERENCE

Requirements to Make Findings

California Health and Safety Code Section (H&SC) Section 40727 requires that prior to adopting, amending, or repealing a rule or regulation, the South Coast AQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference, as well as findings of equity under H&SC Section 40510.5(a) based on relevant information presented at the public hearing and in the staff report.

Necessity

Annual CPI updates to Regulation III – Fees, including Rules 301, 303, 304, 304.1, 306, 307.1, 308, 309, 311, 313, 314 and 315, are necessary to recover South Coast AQMD’s costs as a result of inflation. All fees are necessary to fund the fiscal year 2023-24 Budget. Based on the analysis provided in Chapter 3 of this report, the South Coast AQMD Governing Board has determined that a need exists to increase certain fees in Regulation III that have not been previously CPI adjusted, and to increase fees for permit program processing annual renewals, and plan processing in order to recover reasonable and actual costs incurred by South Coast AQMD in implementing necessary clean air programs. Finally, the amendments set forth in the no fee impact/administrative change chapter of this report are necessary to add rule clarity or make necessary administrative changes to Rules 301, 306, 307.1, and Rule 313.

Equity

H&SC Section 40510.5(a) requires the South Coast AQMD Governing Board to find that an increased fee will result in an equitable apportionment of fees when increasing fees beyond the CPI. Based on the analysis provided in Chapter 3 of this report, the proposed new fees or increases in fee rates in Proposed Amended Rules 301, 306, 307.1, 313, and 320 are found to be equitably apportioned as they are based on either the complexity of equipment and work required for permit evaluation and implementation, or on the amount of emissions from the facility, which is reasonably related to the burden imposed on the South Coast AQMD.

Authority

The South Coast AQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from H&SC Sections 40000, 40001, 40440, 40500, 40501.1, 40502, 40506, 40510, 40510.5, 40512, 40522, 40522.5, 40523, 40702, and 44380 and Clean Air Act Section 502(b)(3) [42 U.S.C. Section 7661(b)(3)].

Clarity

The South Coast AQMD Governing Board has determined that Regulation III – Fees, including Rules 301, 303, 304, 304.1, 306, 307.1, 308, 309, 311, 313, 314, 315, 316 and 320 as proposed to be amended, are written or displayed so that their meaning can be easily understood by the persons directly affected by them.

Consistency

The South Coast AQMD Governing Board has determined that Regulation III – Fees, including Rules 301, 303, 304, 304.1, 306, 307.1, 308, 309, 311, 313, 314, 315, 316 and 320 as proposed to be amended, are in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.

Non-Duplication

The South Coast AQMD Governing Board has determined that Regulation III – Fees, including Rules 301, 303, 304, 304.1, 306, 307.1, 308, 309, 311, 313, 314, 315, 316 and 320, as proposed to

be amended, do not impose the same requirements as any existing state or federal regulation and are necessary and proper to execute the power and duties granted to and imposed upon South Coast AQMD.

Reference

The South Coast AQMD Governing Board, in amending these rules, references the following statutes which South Coast AQMD hereby implements, interprets, or makes specific: H&SC Sections 40500, 40500.1, 40510, 40510.5, 40512, 40522, 40522.5, 40523, 41512, 42300 et seq. 44380, and Federal Clean Air Act Section 502(b)(3) [42 U.S.C. Section 7661(b)(3)].