



Regulation XIII – New Source Review

Working Group Meeting
November 10, 2022

Join Zoom Webinar Meeting
<https://scaqmd.zoom.us/j/98344812021>
Webinar Meeting ID: 983 4481 2021
Teleconference Dial-In: 1-669-900-6833

Agenda

- Previous Working Group Meetings Summary and Overview
- Responses to Regulation XIII Comment Letter
- Updates to Proposed Regulation XIII Amendments
- Proposed Rule 1315.1
- Ongoing Efforts and Next Steps

Previous Working Group Meeting Summary

- Discussed proposed amendments to Regulation XIII
 - Rules 1302, 1306, and 1309
- Received comment letter on proposed amendments

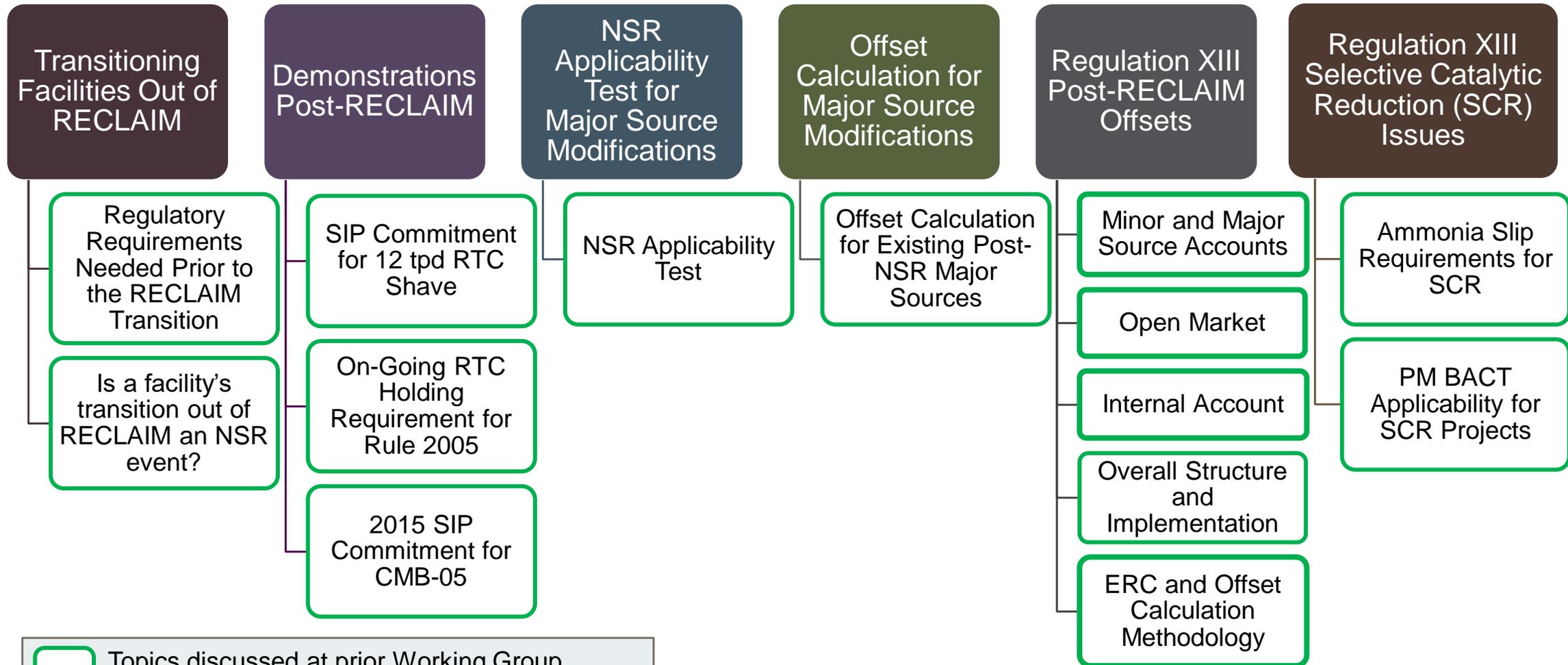
Revised

Planned Changes to New Source Review¹

Rule	Title	Status
1302	Definitions	Update and clarify terms
1306	Emission Calculations	Update NSR applicability and offsetting calculation methodology for major source modifications; no longer pursuing change to surplus discounting of ERC for the Open Market
1309	Emission Reduction Credits (ERCs) and Short Term Credits	Sunset use of Short Term Emission Reduction Credits; remove ozone precursors from interpollutant offset trading

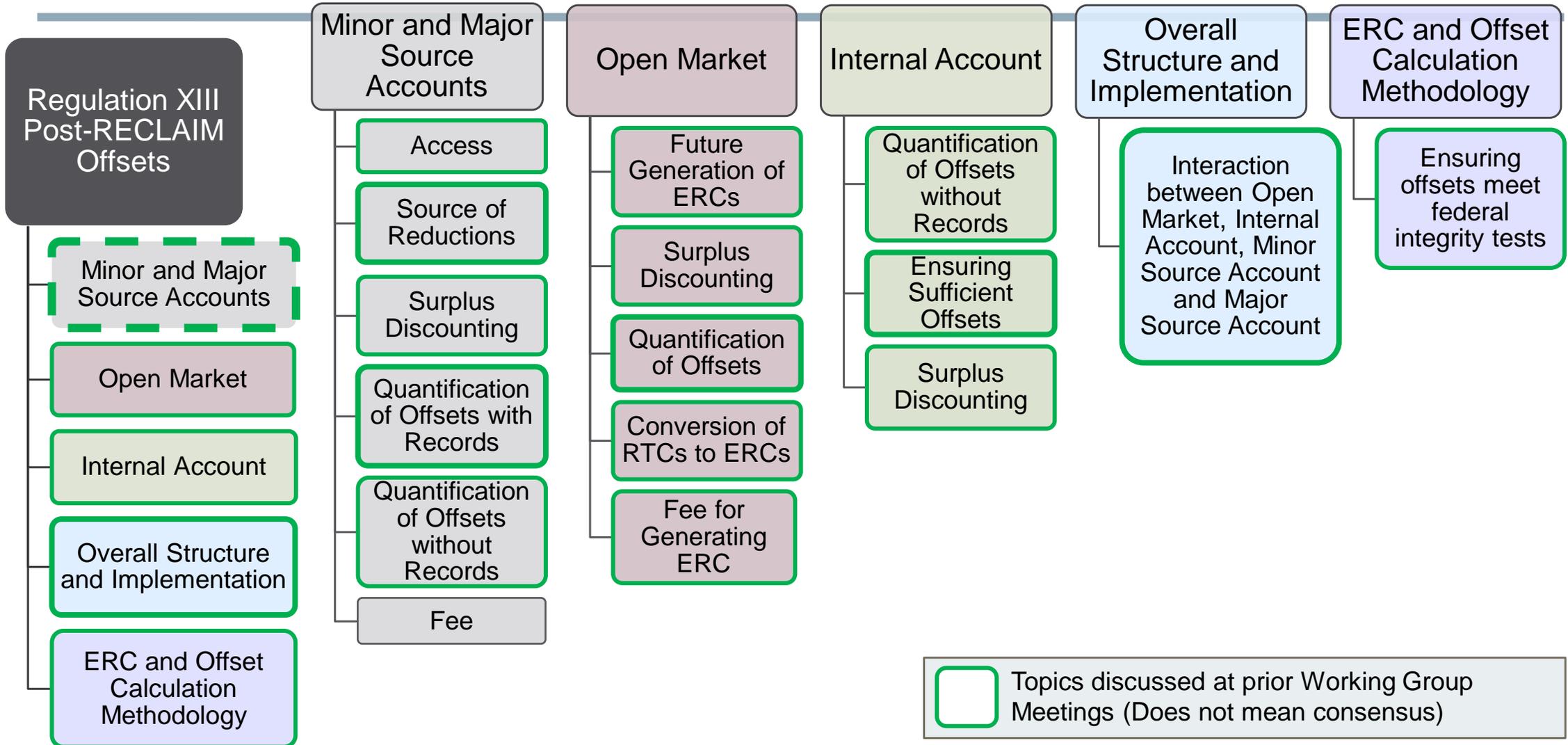
¹ Does not include grammatical or stylistic changes (i.e. changing "District" to South Coast AQMD)

Overview of NSR Issues



Topics discussed at prior Working Group Meetings (Does not mean consensus)

Regulation XIII Post-RECLAIM Offsets



Responses to Regulation XIII Comment Letter

Comment Letter

- Second comment letter received from:
 - Earthjustice
 - Communities for a Better Environment
 - Sierra Club
 - East Yard Communities for Environmental Justice
 - Center for Biological Diversity
- Expressed continuing concerns with Minor and Major Source Accounts
 - See February 2022 working group meeting presentation for more details¹
- Recommend abandoning proposal and instead focus on generating ERCs in the open market
- Comment letter is available on the proposed rules webpage²



¹ <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/regx111/nsr-wgm-february-2022-final.pdf?sfvrsn=6>

² <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/regx111/2022-0916-followup-letter-re-scaqmd-proposed-erc-internal-banks.pdf?sfvrsn=6>

Environmental Organizations Comment Letter – Proposed Accounts Mirror Repealed Rule 1309.2

- U.S. EPA identified issues with repealed Rule 1309.2 including availability of records, surplus adjustment at time of use, and consistency with SIP
- Current proposal has similar issues and should be abandoned

Response

- Staff would include provisions in proposed rule in attempt to address concerns
- The goal of the major source and minor source accounts are to provide a potential solution for offset availability post-RECLAIM

Environmental Organizations Comment Letter – Insufficient Records for Minor Source Account

- Proposal to waive record requirements for minor source account is arbitrary and inconsistent with U.S. EPA requirements
 - All offsets should be verified and quantified, which requires documentation
 - Minor source ERCs would be available to major sources

Response

- Minor facilities are not subject to federal offsets
- Tracking and quantification procedures are consistent with Rule 1315 (c)(3)(B)
- Minor source offsets would be only available to minor facilities
 - Major polluting facilities would not be eligible
 - This is a change from February 2022 rule concept

Environmental Organizations Comment Letter – Retire Orphan Reduction and Shutdown Credits

- Recommends retirement of excess offsets generated by orphan reductions and shutdowns
 - Retirement of orphan reduction and shutdown credits would assist in improving air quality for extreme non-attainment area

Response

- Orphan reductions and shutdowns are the only source of credits in the Internal Account
 - The Internal Account provides offsets for Essential Public Services
- Retirement of orphan reductions and shutdowns would eventually make the Internal Account insolvent
 - Could prevent new Essential Public Services from being built (e.g. hospitals) due to limited ERCs in the Open Market
- Retiring orphan reduction and shutdown credits goes far beyond U.S. EPA NSR requirements

Environmental Organizations Comment Letter – Sources of Credits Remains Speculative

- ERCs are not allowed where emission decreases are required by regulation
- Staff should provide more information on sources that might generate orphan credits

Response

- Orphan shutdowns result when a permit is inactivated without subsequent reinstatement and does not result in issuance of an ERC
 - This typically occurs when equipment is removed or the facility is out of business
 - Reductions required by rule or plan are not eligible
- Annual average of NO_x offsets from orphan shutdowns and reductions is 0.9¹ tons per day
 - Estimating 30% of orphan shutdowns and reduction with records

¹ Annual average from 2015 to 2019

Environmental Organizations Comment Letter – Proposal Creates Additional Avenues of Pollution

- Rule 1304 exempts facilities with a potential to emit (PTE) less than 4 tons per year (tpy) of VOCs or NOx
- Proposed minor source account will allow even more facilities a free pass to pollute
- The Air District should require facilities with a PTE <4 tpy of VOCs or NOx to generate or secure ERCs in the Open Market

Response

- The Open Market does not have enough offsets to fulfill market demand post-RECLAIM
 - NOx ERCs current in the Open Market = 0.43 tons per day
 - Estimated RECLAIM demand (2011-2015) = 0.65 tons per day
 - Projected shortfall of 0.22 tons per day in first year
- Requiring facilities with a PTE of <4 tpy of VOCs or NOx to secure ERCs on the Open Market would increase the demand by an estimated 0.23 tons per day of NOx
 - Projected shortfall would increase to 0.45 tons per day in first year

Environmental Organizations Comment Letter – More Information Requested on Proposed BARCT Discounting

- In July, staff proposed that it apply BARCT instead of BACT for discounting
- In September staff abandoned the approach
 - Staff stated that approach did not appear to make ERCs more accessible or tradable
- The analysis should be provided to see if a BARCT discounting approach would result in significant emission reductions

Response

- CARB expressed concerns that the proposed discounting approach would be prohibited by SB 288
- Staff abandoned the approach when it appeared that accessibility would not be improved and there could be SB 288 issues
- No further analysis will be conducted

Environmental Organizations Comment Letter – Proposed Accounts Create More Offsets than What is Necessary

- Staff is creating accounts to address 400 pound per day shortage of NOx offsets
- Proposed accounts would generate 7,200 pounds per day of NOx offsets
- No information is provided explaining why such a large amount of credits is needed

Response

- Open Market currently has 800 pounds per day of NOx ERCs
- Annual demand from RECLAIM facilities is conservatively estimated to be 1,200 pounds per day of NOx ERCs
- Projected deficit:
 - Year 1: $800 - 1,200 = -400$
 - Year 2: $-400 - 1,200 = -1,600$
 - Year 3: $-1,600 - 1,200 = -2,800$
 - Year 4: $-2,800 - 1,200 = -4,000$
 - Year 5: $-4,000 - 1,200 = -5,200$
- Creation of major and minor source accounts would provide a temporary safe harbor
 - Eventually, major sources will be fully reliant on Open Market ERCs

Environmental Organizations Comment Letter – Proposed Accounts Require Adequate CEQA Review

- If the South Coast AQMD proceeds with this approach, staff must conduct a thorough environmental impact assessment
- Rule 1315 impact assessment indicated significant impacts
- The proposed accounts will likely have similar or worse environmental impacts

Response

- Staff will conduct a thorough environmental assessment as part of this rule development process

Environmental Organizations Comment Letter – Certain Industries and Facilities in Overburdened Communities Should be Excluded from Accessing Proposed Accounts

- Agree with staff to consider limiting access based on industry type and location
 - Petroleum related facilities and facilities in AB 617 communities should be excluded
- Limits should be placed on the types of operations and locations of sources that access the proposed minor and major accounts for pollutants that have localized health impacts

Response

- Staff is considering excluding petroleum related facilities or facilities located within an AB 617 community from accessing the proposed accounts

Environmental Organizations Comment Letter – Open Market ERCs Should be Capped and a Limited Time of Use

- Small number of facilities hold most ERCs, with some facilities holding ERCs for over 10 years
- The amount of ERCs a facility can hold should be capped
- ERCs should be required to be sold, transferred, or used within a specified length of time
- This approach would make ERCs more accessible and facilitate trading

Response

- Staff is considering including a two-year time limit to set aside minor source and major source offsets once a Permit to Construct is approved

Updates to Proposed Regulation XIII Amendments

Background

- Staff provided preliminary draft rule language for:
 - Rule 1302 – Definitions
 - Rule 1306 – Emission Calculations
 - Rule 1309 – Emission Reduction Credits (ERCs) and Short Term Credits
- Southern California Alliance of Publicly Owned Treatment Works (SCAP) requested clarification on definition of Food Waste Diversion Facility
- U.S. EPA indicated that Rule 1306 needed to distinguish between BACT applicability and required offsetting
- Revised preliminary draft rules are available on Proposed Rules webpage¹

¹ <http://www.aqmd.gov/home/rules-compliance/rules/scaqmd-rule-book/proposed-rules/regulation-xiii>

Definition Change and New Definition in Rule 1302

- Food Waste Diversion Facility limited to publicly owned materials recovery facilities that receive, separate, and prepare food waste for in-vessel digestion and does not include composting
- Staff is analyzing the estimated emissions from these facilities
 - Likely to be substantially less because composting is not applicable (source of VOCs) and less combustion is necessary (source of NOx)
- Staff is adding a definition for Major Stationary Source and referring to the definition in 40 CFR Section 51.165

Proposed Amended Rule 1306 – Emission Calculations

- Previous version of PAR 1306 incorrectly determined Regulation XIII applicability calculations the same as offsetting calculations
- The allowances for calculating required offsets are not acceptable when determining Regulation XIII applicability
- Calculations for determining Regulation XIII applicability and calculations of required offsets have been separated into their own subdivisions

Proposed Language for Rule 1306 (d)(1) and (d)(2)

(d) Calculations for Determining Regulation XIII Applicability
This subdivision shall be used for determining applicability of Rule 1303 requirements.

(1) New Equipment Requiring a Permit (No Previous Permit).

Emissions are calculated pursuant to Rule 1306(b).

(2) Modification of Existing Major Stationary Source or Modification by Itself Would Constitute a Major Stationary Source

Net emissions increase after the modification shall be calculated as:

(A) the post-modification potential to emit minus the permitted or allowable pre-modification potential to emit; and

(B) if the modification does not result in an emission increase under subparagraph (d)(2)(A), then calculated as defined and determined pursuant to Rule 1316(a)(1)



No change



Two-tier test requiring both federal test and PTE-to-PTE test to determine NSR applicability

Proposed Language for Rule 1306 (d)(3)

- 3) Minor Modification of Existing Source at a Minor Facility
Net emissions increase after the modification shall be calculated as:
- (A) the post-modification potential to emit minus the permitted or allowable pre-modification potential to emit; or
 - (B) the post-modification potential to emit minus the actual emissions calculated pursuant to Rule 1306(c)(1) if the source was never subject to Rule 213 or Regulation XIII.



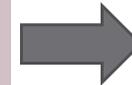
Minor modifications at minor facilities continue to use existing NSR applicability determination process

Proposed Language for Rule 1306 (e)(1) and (e)(2)

Rule 1306 (e) Determination of Required Offsets

This subdivision shall be used for calculating the amount of required offsets pursuant to Rule 1303(b)(2).

- (1) New Equipment Requiring a Permit (No Previous Permit).
Emissions are calculated pursuant to Rule 1306(b).
- (2) Modification of Existing Major Stationary Source or Modification by Itself Would Constitute a Major Stationary Source
Net emissions increase after the modification shall be calculated as:
 - (A) the post-modification potential to emit minus the permitted or allowable pre-modification potential to emit when:
 - (i) actual emissions are at least 80 percent of the pre-modification potential to emit; or
 - (ii) past emission increases were fully offset less than five years prior to the date an application is deemed complete; or
 - (B) the post-modification potential to emit minus the actual emissions calculated pursuant to Rule 1306(c)(1) if the source does not meet the criteria of subparagraph (e)(2)(A) or the sources was never subject to Rule 213 or Regulation XIII;



No change



Subparagraph (e)(2)(A) indicates that PTE-to-PTE test is sufficient in specific instances



Actual-to-PTE test to determine offset requirements if subparagraph (e)(2)(A) does not apply

Proposed Language for Rule 1306 (e)(3)

- (3) Minor Modification of Existing Source at a Minor Facility
Net emissions increase after the modification shall be calculated as:
- (A) the post-modification potential to emit minus the permitted or allowable pre-modification potential to emit; or
 - (B) the post-modification potential to emit minus the actual emissions calculated pursuant to Rule 1306(c)(1) if the source was never subject to Rule 213 or Regulation XIII.



Minor modifications at minor facilities continue to use existing calculation methodology to determine required offsets

Ongoing Efforts and Next Steps



Continue Working Group Meetings



Continue rulemaking activities



Continue work with U.S. EPA, CARB, and stakeholders to resolve NSR issues

Contacts – RECLAIM & New Source Review

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To receive e-mail notifications for Regulation XX or Regulation XIII, sign up at: www.aqmd.gov/sign-up
To view proposed rules and supporting documentation, visit the South Coast AQMD Proposed Rules webpage at:
<http://www.aqmd.gov/home/rules-compliance/rules/scaqmd-rule-book/proposed-rules>