

Proposed Rule 317.1

Clean Air Act Nonattainment Fees
for the 8-Hour Ozone Standards

Cleaning The Air That We Breathe...



Public Consultation Meeting

April 3, 2024
9:00 a.m.

Zoom Meeting Link:
<https://scaqmd.zoom.us/j/97559313527>

Dial In: +1 (669) 900-6833

Meeting ID: 975 5931 3527

Agenda



Introduction



Ozone Standards



CAA Section 185 Nonattainment Fee



Proposed Rule Language



CEQA & Socioeconomic Impacts



Looking Ahead



Open Discussion









Introduction

Clean Air Act Nonattainment Fees



Meeting Information

- South Coast Air Quality Management District (AQMD) acknowledges the challenges to businesses and stakeholders
- This meeting is being held remotely via videoconference and teleconference (Zoom)
- Although it is a different format, staff will take the time to listen to all stakeholder comments
 - Please use the “raise hand” feature to speak:
 -  Click on the  button
 -  Dial *9
 - When it is your turn to speak, your name will be announced
 - If you are a panelist, use the “unmute” feature to speak:
 -  Click on the  button
 -  Dial *6
 - If you are not a panelist, the meeting host will unmute you
- In addition to this meeting, staff is available for individual meetings

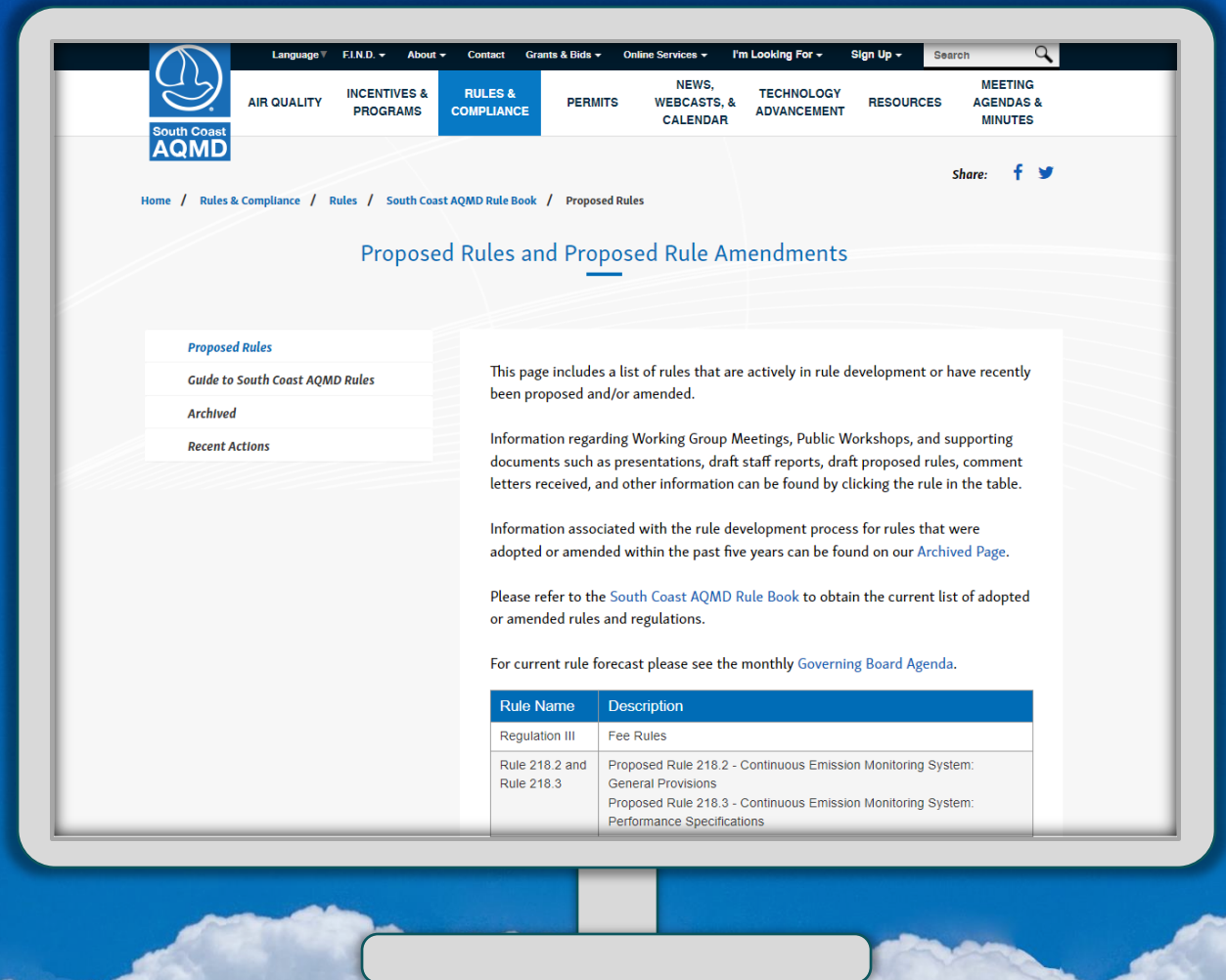


Rule Development Materials

Materials will be made available on the Proposed Rules and Proposed Rule Amendments Website:

<https://www.aqmd.gov/home/rules-compliance/rules/scaqmd-rule-book/proposed-rules>

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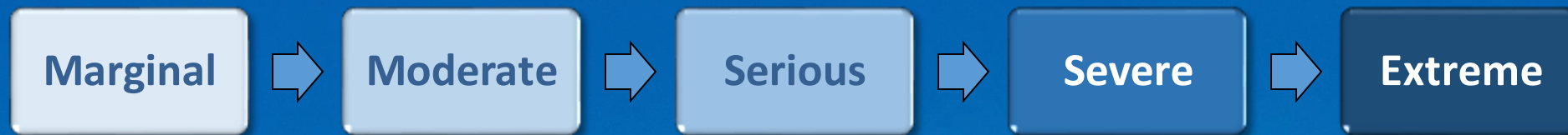
Ozone Standards

Clean Air Act Nonattainment Fees



National Ambient Air Quality Standards (NAAQS)

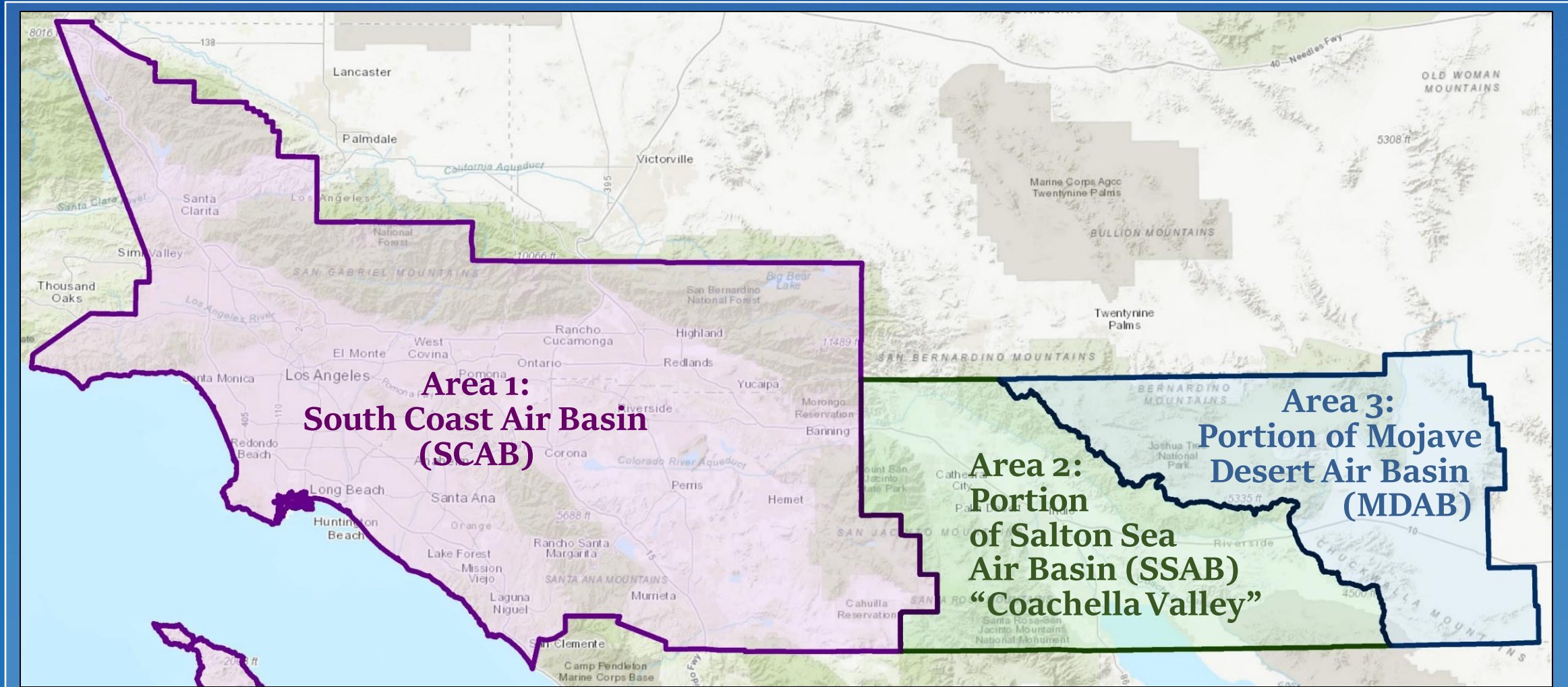
- U.S. Environmental Protection Agency (EPA) establishes NAAQS for various air pollutants to be protective of human health
- The U.S. EPA has promulgated four NAAQS for ozone (est. 1979, 1997, 2008, and 2015)
- The Air Quality Management Plan (AQMP) becomes part of the State Implementation Plan (SIP) which describes the pathway to attainment for each NAAQS
- Areas not meeting the ozone standards are designated as nonattainment areas based on exceedance level:



- Attainment deadlines are established based on classification, with more time provided for areas with worse air quality



South Coast AQMD Regions





Ozone NAAQS Attainment Classifications

NAAQS Year	Averaging Time	NAAQS Level	Revoked Effective	Region ¹	Attainment Status	Attainment Deadline
1979	1-Hour	120 ppb	06/15/2005	SCAB	Extreme Nonattainment	12/31/2022
				Coachella Valley	Attainment ²	11/15/2007
1997	8-Hour	80 ppb	04/06/2015	SCAB	Extreme Nonattainment	06/15/2024
				Coachella Valley	Extreme Nonattainment	06/15/2024
2008	8-Hour	75 ppb	N/A	SCAB	Extreme Nonattainment	07/20/2032
				Coachella Valley	Extreme Nonattainment	07/20/2032
2015	8-Hour	70 ppb	N/A	SCAB	Extreme Nonattainment	08/03/2038
				Coachella Valley	Extreme Nonattainment ³	08/03/2038 ³

1 – South Coast AQMD portion of MDAB is designated as unclassifiable

2 – U.S. EPA finding of attainment in 80 FR 20166 (04/15/2015) <https://www.govinfo.gov/content/pkg/FR-2015-04-15/pdf/2015-08582.pdf>

3 – Voluntary reclassification to “extreme” nonattainment is pending U.S. EPA approval



CAA Section 185 Nonattainment Fee

Clean Air Act Nonattainment Fees



CAA Section 185 Fee Requirements

- Clean Air Act (CAA) section 185 establishes fee requirements for “severe” or “extreme” ozone nonattainment areas when the area fails to attain a NAAQS by the applicable attainment date
- The CAA requires that each major stationary source of VOCs and/or NO_x, within such area, either reduce emissions by 20% below baselines or pay a fee to the State
 - A major stationary source in SCAB or Coachella Valley is defined having a potential to emit of 10 tons per year or more of VOC and/or NO_x
 - Estimated about 320 major stationary source facilities in South Coast AQMD
- The fee shall be collected
 - For each calendar year beginning after the attainment date
 - Until the area is redesignated as an attainment area for that ozone standard
- The fee does not go away when an ozone standard is revoked or a new ozone standard is promulgated
- U.S. EPA is required to collect the fees if the SIP does not meet the requirements or if a state is not administering and enforcing CAA section 185



Ozone NAAQS Nonattainment Fee Summary and Approach

South Coast AQMD may only collect fees to satisfy the Section 185 requirement for 1997 and 2008 ozone standards

		Rule 317 – Clean Air Act Non-Attainment Fees	PR 317.1 – Clean Air Act Nonattainment Fees for the 8-Hour Ozone Standards		TBD
		1979 (revoked)	1997 (revoked)	2008	2015
Section 185 Due Date		12/31/2000	Not Established	07/20/2022	08/03/2028
Attainment Deadline	South Coast	12/31/2022	06/15/2024	07/20/2032	08/03/2038
	Coachella Valley	11/15/2007 ²	06/15/2024	07/20/2032	08/03/2038 ³
Calendar Year Nonattainment Fees Begin	South Coast	2011 ¹	2025	2033	2039
	Coachella Valley	2008 ²	2025	2033	2034 ³
U.S. EPA Currently Allows District to Utilize CAA §172(e) Fee Equivalency Approach		Yes	Yes	No	No
South Coast AQMD Currently has Emission Reductions Surplus to Applicable SIP		Yes	No	Not Applicable	Not Applicable

1 – South Coast AQMD continues to submit Rule 317 Fee Assessment Reconciliation Reports for failure to demonstrate attainment with this standard by the prior statutory attainment deadline of 11/15/2010

2 – U.S. EPA finding of attainment in 80 FR 20166 (04/15/2015) <https://www.govinfo.gov/content/pkg/FR-2015-04-15/pdf/2015-08582.pdf>

3 – Voluntary reclassification to “extreme” nonattainment is pending U.S. EPA approval



Need for Proposed Rule 317.1

Air District	1979 1-Hour Ozone NAAQS	1997 8-Hour Ozone NAAQS	2008 8-Hour Ozone NAAQS
South Coast AQMD	Fee Equivalency Approach (Rule 317 SIP Approved)	Pending Rule Development/Adoption	Pending Rule Development/Adoption

- Proposed Rule 317.1 – Clean Air Act Nonattainment Fees for the 8-Hour Ozone Standards
 - Provides a compliance pathway for the 1997 and 2008 8-hour ozone NAAQS CAA Section 185 requirements
 - 1997 8-hour ozone standard – adequate funding to utilize the fee equivalency approach is not available
 - 2008 8-hour ozone standard – not a revoked standard and the South Coast AQMD may not utilize a fee equivalency approach
- If South Coast AQMD does not adopt a SIP approved rule, facilities would be subject to fees which will instead be collected by the U.S. EPA

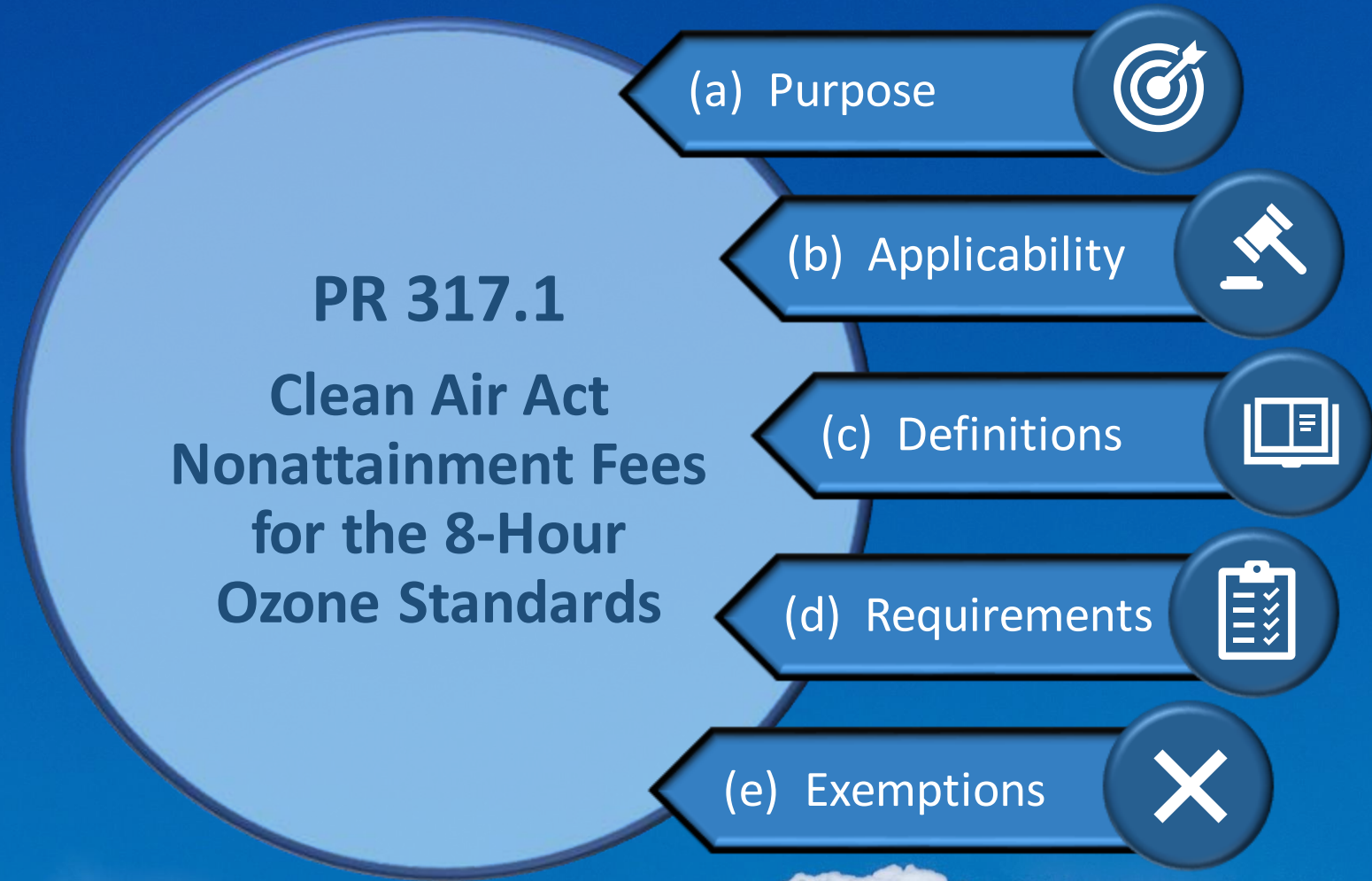


Preliminary Draft Rule Language

Clean Air Act Nonattainment Fees



Proposed Rule (PR) 317.1 Structure





Purpose

(a) Purpose

The purpose of this rule is to satisfy requirements as specified in Sections 182(d), 182(e), 182(f) and 185 of the 1990 amendments to the federal Clean Air Act (CAA) for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 2008 8-hour ozone NAAQS.

Rule development to comply with the CAA should the area fail to attain the 1997 and/or 2008 8-hour ozone standards



Applicability

(b) Applicability

- (1) This rule shall become applicable if and when the U.S. Environmental Protection Agency (EPA) makes a final finding that a Basin has failed to attain the 1997 8-hour ozone NAAQS or the 2008 8-hour ozone NAAQS by the applicable Attainment Date.
- (2) Except as otherwise provided as exempt in subdivision (e), this rule is applicable to any Major Stationary Source of Volatile Organic Compounds (VOC) and/or Nitrogen Oxides (NO_x).

- If a major stationary source is not a major stationary source of VOCs and NO_x, no CAA nonattainment fees will be required
- A fee will only apply to a major stationary source of that particular pollutant
- Fees will be assessed for each pollutant and for each standard

Major Stationary Source Potential to Emit Emissions Thresholds (tons/year)

Pollutant	South Coast Air Basin	Coachella Valley
VOCs	10	10
NO _x	10	10



Key Definitions – Baseline Emissions

- (7) **BASELINE EMISSIONS** means a Major Stationary Source's VOC and/or NO_x emissions, for which a source qualifies as a Major Stationary Source. Baseline Emissions for VOC and/or NO_x are calculated separately for each Applicable Ozone Standard, and as follows:
- (A) For a Major Stationary Source which was a Major Stationary Source during the entirety of the Attainment Year, the Baseline Emissions is the lower of:
- (i) The Actual Emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rule(s), and implementation plan(s), during the Attainment Year or
 - (ii) The amount of emissions allowed under permit(s), plan(s), applicable rule(s), and implementation plan(s) during the Attainment Year.

Rule Provision	(c)(7)(A)	(c)(7)(B)	(c)(7)(C)
Became Major Source	As of beginning of Attainment Year	During Attainment Year	After Attainment Year



Requirements – Fee Assessment

(1) Fee Assessment

The Executive Officer shall assess the CAA Nonattainment Fees for each Applicable Ozone Standard:

(A) Beginning the calendar year after the Attainment Year for a:

- (i) Major Stationary Source which was a Major Stationary Source during the entirety of the Attainment Year; or
- (ii) Major Stationary Source that becomes subject to this rule during the Attainment Year; or

(B) Beginning the calendar year after the calendar year used to establish Baseline Emissions for a Major Stationary Source that becomes subject to this rule after the Attainment Year.

Example Implementation Timeline for 1997 8-Hour Ozone Standard CAA Nonattainment Fee

Calendar Year	2024	2025	2026	2027
Criteria	Attainment year	Initial fee assessment year	Fee assessment year	Fee assessment year
			Facility submits AER for 2025	Facility submits AER for 2026
			South Coast AQMD to assess facility's fee obligations for 2025	South Coast AQMD to assess facility's fee obligations for 2026



Requirements – Fee Determination

(2) Fee Determination

Beginning the calendar year after the applicable Attainment Year, the CAA Nonattainment Fee shall be the Annual CAA Nonattainment Fee Rate for the applicable Fee Assessment Year per ton of Actual Emissions of VOC and/or NOx during the Fee Assessment Year that exceed 80% of the Baseline Emissions or Alternative Baseline Emissions. For each Major Stationary Source, the CAA Nonattainment Fee shall be calculated as follows:

VOC CAA Nonattainment Fees =

$$\text{Annual CAA Nonattainment Fee Rate} \times [A_v - (0.8 \times B_v)]$$

NOx CAA Nonattainment Fees =

$$\text{Annual CAA Nonattainment Fee Rate} \times [A_n - (0.8 \times B_n)]$$

CAA Nonattainment Fees =

$$\text{NOx CAA Nonattainment Fees} + \text{VOC CAA Nonattainment Fees}$$

Where:

- For a Major Stationary Source of VOC:
 - A_v = Actual Emissions of VOC for the applicable Fee Assessment Year (in tons per year). If A_v is less than or equal to 80% of B_v , there shall be no VOC CAA Nonattainment Fee assessed for the Fee Assessment Year.
 - B_v = Baseline Emissions or Alternative Baseline Emissions for VOC (in tons per year).
- For a Major Stationary Source of NOx:
 - A_n = Actual Emissions of NOx for the applicable Fee Assessment Year (in tons per year). If A_n is less than or equal to 80% of B_n , there shall be no NOx CAA Nonattainment Fee assessed for the Fee Assessment Year.
 - B_n = Baseline Emissions or Alternative Baseline Emissions for NOx (in tons per year).

- This calculation is consistent with the CAA requirements
- The U.S. EPA fee rate is adjusted annually for inflation based on the consumer price index
- An example calculation is provided in the following slide



CAA Section 185 Fee Amount Example Calculation for VOCs

$$\left[\text{Actual Annual Tons of VOC Emitted} - \left(0.8 \times \text{Baseline Annual Tons of VOC Emitted} \right) \right] \times \text{Annual U.S. EPA CAA \$185 Fee Rate} = \text{Annual CAA Nonattainment Fee for VOC}$$

Hypothetical Facility Calculation for VOCs

- 2024 Baseline Annual Tons of VOCs = 15
- 2025 Annual Tons of VOCs = 13
- 2025 Annual U.S. EPA CAA \$185 Fee Rate = \$11,922.00

$$\text{Annual CAA Nonattainment Fee for VOC} = [13 - (0.8 \times 15)] \times \$11,922.00 = \$11,922.00$$

- Follow same procedure, using NO_x, to calculate annual CAA nonattainment fee for NO_x
- Add together the annual CAA nonattainment fee for VOC and for NO_x to calculate the total annual CAA nonattainment fee



Requirements – Annual Reporting and Payment

(3) Annual Reporting and Payment

- (A) The owner or operator of a Major Stationary Source shall annually report all Actual Emissions, regardless of whether the owner or operator received notice from the Executive Officer.
- (B) The owner or operator of a Major Stationary Source shall, for each applicable Fee Assessment Year, which includes the years prior to the U.S. EPA making a final finding that a Basin has failed to attain the Applicable Ozone standard, pay the appropriate CAA Nonattainment Fees, determined pursuant to paragraph (d)(2), regardless of whether the owner or operator received notice from the Executive Officer.

- Rule 301 (e)(10) requires both the completion of AER and receipt of the AER fee payment by the 75th day following January 1
- This includes the years prior to the U.S. EPA making a final finding that a basin has failed to attain the applicable ozone standard.
- AER reports will be used to determine CAA fee obligations



Requirements – Payment Due Date

(4) Payment Due Date

Unless a later date, not to exceed 365 days from the applicable due date, is specified by the Executive Officer, the owner or operator of a Major Stationary Source, regardless of whether the owner or operator received notice from the Executive Officer, shall submit full payment for:

- (A) The invoice that includes the CAA Nonattainment Fee for the initial Fee Assessment Year for the Applicable Ozone Standard for the Major Stationary Source, no later than 365 days from the date the invoice is issued by the Executive Officer; and
- (B) An invoice subsequent to the first invoice that included the CAA Nonattainment Fee for the initial Fee Assessment Year for the Applicable Ozone Standard for the Major Stationary Source, either:
 - (i) No later than December 15th of the year the invoice is issued by the Executive Officer; or
 - (ii) No later than 75 days from the date the invoice is issued by the Executive Officer, whichever is later.

- Initial invoice due: 365 days from issuance
 - Multiple subsequent years may be included in initial invoice if there is a delay in the finding of failure by the U.S. EPA
- Subsequent invoices due: by 12/15 or 75 days from issuance, whichever is later
- Although an unlikely occurrence, Executive Officer is limited to extend deadlines by 365 days from the date of invoice issuance
 - Ensures the CAA nonattainment fees are continually being administered pursuant to CAA



Requirements – Failure to Pay Fees

(5) Failure to Pay Fees

If one-hundred twenty (120) days have elapsed since the invoice due date and all CAA Nonattainment Fees have not been paid in full, the Executive Officer may take action to revoke all Permits to Operate for equipment on the premises, as authorized in California Health and Safety Code Section 42307.

Facility has 120 days from invoice to make payment before potential actions to revoke all permits to operate



Requirements – Courtesy Notices

(6) Notice of Rule Applicability

No later than 60 days after a notice is issued by the Executive Officer that the facility is a Major Stationary Source subject to this rule, the owner or operator of a Major Stationary Source shall confirm or contest the Major Stationary Source's rule applicability.

(7) Notice of Baseline Emissions

No later than 60 days after a notice is issued by the Executive Officer specifying the Baseline Emissions for the Major Stationary Source, the owner or operator of a Major Stationary Source shall confirm or contest the assigned Baseline Emissions.

- As a courtesy to the major stationary sources, the Executive Office will be sending out notifications of rule applicability and of baseline emissions
- Facility shall confirm or contest no later than 60 days from the notice issuance
- Allows facility opportunity to potentially provide any additional information which may be relevant to determinations



Requirements – Alternative Baseline Emissions Applicability

(8) Alternative Baseline Emissions

If the owner or operator of a Major Stationary Source requests to use an Alternative Baseline Emissions to determine the CAA Nonattainment Fee, the following requirements shall be met:

- (A) U.S. EPA has issued guidance authorizing an alternative methodology for calculation of a Major Stationary Source's Baseline Emissions, pursuant to CAA Section 185(b)(2) for the Applicable Ozone Standard, that is consistent with the methodology specified in subparagraph (d)(8)(C) and requirements specified in subparagraphs (d)(8)(B) and (d)(8)(D).
- (B) The Major Stationary Source was a Major Stationary Source during the entirety of the Attainment Year;
- (D) The Executive Officer has authorized a Major Stationary Source to use this Alternative Baseline Emissions.

- South Coast AQMD agrees with a need for an alternative baseline emissions option
- CAA only allows an alternative baseline emissions if the U.S. EPA has issued guidance for establishing alternative baseline emissions
- U.S. EPA has not issued such guidance for the 8-hour ozone standards
- A request was submitted to the U.S. EPA for allowing an alternative baseline emissions for the 8-hour ozone standards
- This is a tentative pathway and is subject to U.S. EPA review and approval



Requirements – Alternative Baseline Emissions Criteria

- (C) No later than 120 days after the end of the Attainment Year or no later than 120 days after the U.S. EPA makes a final finding that the Basin has failed to attain the Applicable Ozone Standard by the applicable Attainment Date, whichever is later, the owner or operator of a Major Stationary Source submits to the Executive Officer an Alternative Baseline Emissions Request that contains the following:
- (i) An Alternative Baseline Emissions Report including Actual Emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rule(s), and implementation plan(s), for each of the relevant ten (10) calendar years preceding and including the Attainment Year;
 - (ii) Identification of the twenty-four consecutive months representing typical operations:
 - (a) For a Major Stationary Source without an electrical steam generating unit(s), within the last relevant ten (10) calendar years prior to and including the Attainment Year selected; or
 - (b) For a Major Stationary Source with an electrical steam generating unit(s), within the last relevant five (5) calendar years prior to and including the Attainment Year selected or, with justification, the relevant five (5) calendar years prior to the aforementioned calendar years;
 - (iii) An analysis demonstrating that the Actual Emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rules(s), and implementation plan(s), from the average of the twenty-four months, identified pursuant to clause (d)(8)(C)(ii), represent typical operations;
 - (iv) Analysis of adopted local, state, and federal rules or regulations that would have restricted the source's ability to either operate or emit a particular pollutant, had they been in effect during the consecutive twenty-four months selected;
 - (v) The average annual emissions of the twenty-four months, identified in clause (d)(8)(C)(ii), not to exceed emissions allowed through the permit(s), plan(s), applicable rules(s), and implementation plan(s), considering the impacts identified in clause (d)(8)(C)(iv);
 - (vi) Certification, in writing, by the highest-ranking executive on site that the source's emissions are irregular, cyclical, or otherwise vary significantly from year to year; and
 - (vii) Any other information as required by the U.S. EPA guidance; and

- Criteria established based on a guidance document U.S. EPA issued for the 1-hour ozone standard ¹
 - A source that has irregular, cyclical, or varying emissions from year to year may be eligible for alternative baseline emissions.

1 – https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20080321_harnett_emissions_baseline_185.pdf



Requirements – Alternative Baseline Emissions Request Payment

(9) Alternative Baseline Emissions Request Payment

- (A) The owner or operator of a Major Stationary Source electing to submit an Alternative Baseline Emissions Request, pursuant to subparagraph (d)(8)(c), shall pay an hourly staff evaluation rate of \$209.31, unless Regulation III - Fees assigns a fee amount associated with evaluating the Alternative Baseline Emissions Request that shall be paid in lieu of this rate.
- (B) The owner or operator of a Major Stationary Source shall submit full payment of the amount invoiced no later than 60 days from receiving the invoice for evaluation of the Alternative Baseline Emissions Request.

- The fee for the Alternative Baseline Emissions Request is equal to the time worked by South Coast AQMD staff for evaluation
- The evaluation is assessed at an hourly staff evaluation rate that is consistent with the hourly rate for other evaluation fees in Rule 301



Exemptions

(1) Extension Year

The owner or operator of a Major Stationary Source shall not be required to remit CAA Nonattainment Fees under this rule during any calendar year that is considered a Basin's Extension Year for the Applicable Ozone Standard.

(2) Cessation of Fees

The owner or operator of a Major Stationary Source shall not be required to remit CAA Nonattainment Fees for an Applicable Ozone Standard once the Basin has been redesignated by U.S. EPA to attainment for that Applicable Ozone Standard or, for a revoked Applicable Ozone Standard, if U.S. EPA has terminated the anti-backsliding requirement associated with the CAA Nonattainment Fees for the Applicable Ozone Standard. The CAA Nonattainment Fees will cease in the same calendar year as the redesignation or termination.

- If the U.S. EPA grants an extension year before the failure to attain, fee obligations will not apply to that year
- Fees will cease if area is redesignated as in attainment or if anti-backsliding requirements are terminated



California Environmental Quality Act (CEQA) and Socioeconomic Impacts

Clean Air Act Nonattainment Fees



California Environmental Quality Act (CEQA)

- PR 317.1 has been developed as a government funding mechanism to satisfy federal requirements without involving a commitment to any specific project that could result in a potentially significant physical impact on the environment
- PR 317.1 is not a “project” pursuant to CEQA Guidelines Section 15378 (b)(4)



Socioeconomic Impact Assessment

- A socioeconomic impact assessment for PR 317.1 will be conducted to provide information to Governing Board and stakeholders but is not required per Health and Safety Code Sections 40440.8 and 40728.5 because air quality or emission limitations will not be significantly affected
- Socioeconomic Impact Assessment for PR 317.1 will consider:
 - Type of affected industries, including small businesses
 - Range of probable costs to industry or business
 - Impact on employment and regional economy
- Socioeconomic Impact Assessment will be made available at least 30 days prior to the Public Hearing on June 7, 2024 (subject to change)



Looking Ahead

Clean Air Act Nonattainment Fees

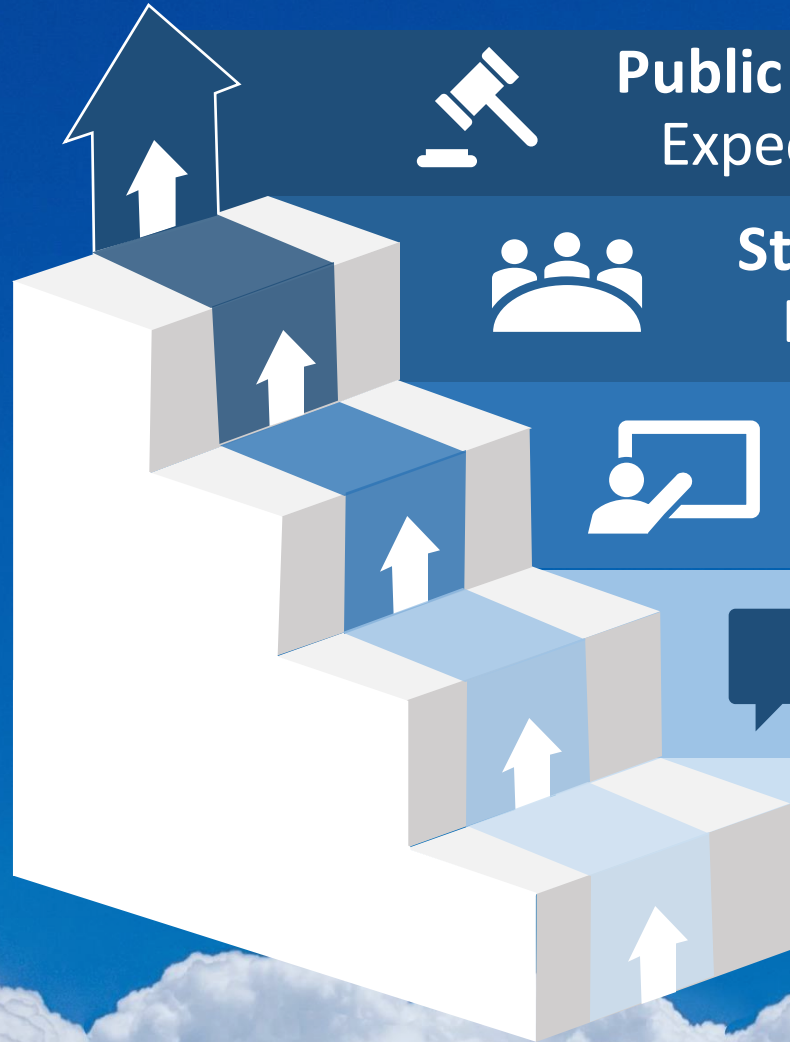


Implementation - Spending of Funds

- CAA nonattainment fees would support South Coast AQMD efforts to improve air quality
- PR 317.1 is being developed to set the regulatory framework for collection of CAA nonattainment fees
- Resources anticipated to implement PR 317.1
 - Considering setting aside 10% of the collected fees for administration/implementation
- Guidance on the spending of these funds would be determined through a future public process for the following reasons:
 - Substantial resources will be needed to properly implement PR 317.1,
 - Significant uncertainty in the amount of future fees the South Coast AQMD will receive and an inability to commit funds which are not guaranteed,
 - The fees would not be potentially assessed until calendar year 2026 for the 1997 8-hour ozone standard and calendar year 2034 for the 2008 8-hour ozone standard,
 - Readily available technologies will continue to advance, and
 - South Coast AQMD emissions reductions strategies will continuously be evolving.



Next Steps



Public Hearing
Expected June 7, 2024



Stationary Source Committee
Expected April 19, 2024



Release Draft Rule Language & Staff Report
Expected by early May 2024



Close of Public Comments
April 17, 2024



Public Consultation Meeting
April 3, 2024



Early Feedback Request

- Preliminary draft rule language:
 - We appreciate your early review
 - Early input allows us more time to work with stakeholders to address any issues
 - We are available for discussions

To receive email notifications, sign up via the:
[South Coast AQMD Newsletter Sign Up Website](#)

Additional information is located on the:
[South Coast AQMD Proposed Rules and Proposed Rule Amendments Website](#)

Please provide any feedback by:
Wednesday, April 17, 2024

To schedule a discussion or provide feedback, please contact:

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PR 317.1 Staff Contacts

Please contact staff with any questions or comments

PR 317.1 Rule Development

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Open Discussion

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