

Dated: December 12, 2017.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R09–OAR–2018–0120; FRL–9975–81—Region 9]

**Approval of California Air Plan Revisions; Butte County Air Quality Management District; Stationary Source Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Butte County Air Quality Management District (BCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns the District’s New

Source Review (NSR) permitting program for new and modified sources of air pollution. We are proposing action on a local rule under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by April 23, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0120 at <http://www.regulations.gov>, or via email to T. Khoi Nguyen, at [nguyen.thien@epa.gov](mailto:nguyen.thien@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please

contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** T. Khoi Nguyen, EPA Region IX, (415) 947–4120, [nguyen.thien@epa.gov](mailto:nguyen.thien@epa.gov).

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

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**I. The State’s Submittal**

*A. What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was amended by the BCAQMD and submitted by the California Air Resources Board (CARB), which is the governor’s designee for California SIP submittals.

TABLE 1—SUBMITTED RULE

| Local agency | Rule No.  | Rule title                      | Amended | Submitted |
|--------------|-----------|---------------------------------|---------|-----------|
| BCAQMD ..... | 432 ..... | Federal New Source Review ..... | 3/23/17 | 6/12/17   |

On December 12, 2017, the submittal for the BCAQMD was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

*B. Are there other versions of this rule?*

On December 22, 2016, the EPA finalized a limited approval and limited disapproval of Rule 432. 81 FR 93820.

*C. What is the purpose of the submitted rule?*

Section 110(a) of the CAA requires states to submit regulations that include a pre-construction permit program for certain new or modified stationary sources of pollutants, including a permit program as required by Part D of Title I of the CAA.

The purpose of District Rule 432 is to implement a federal preconstruction permit program for new and modified minor sources of regulated NSR pollutants, and new and modified major sources of regulated NSR pollutants for which the area is designated nonattainment. BCAQMD is currently designated as a nonattainment area for the 2008 8-hr ozone and 2006 24-hr PM<sub>2.5</sub> NAAQS. The rule revision further corrects a deficiency in which the EPA previously finalized a limited disapproval of Rule 432 because we determined that the rule does not fully satisfy 40 CFR 51.165(a)(13)’s requirements for regulation of PM<sub>2.5</sub> precursors as it pertains to ammonia. We present our evaluation under the CAA and the EPA’s regulations of the revised NSR rule submitted by CARB, as identified in Table 1, and provide our

reasoning in general terms below and a more detailed analysis in our technical support document (TSD), which is available in the docket for the proposed rulemaking.

**II. The EPA’s Evaluation and Action**

*A. How is the EPA evaluating the rule?*

The submitted rule must meet the CAA’s general requirements for SIPs and SIP revisions in CAA sections 110(a)(2), 110(l), and 193 as well as the applicable requirements contained in part D of title I of the Act (sections 172 and 173) for a nonattainment NSR permit program. In addition, the submitted rule must contain the applicable regulatory provisions of 40 CFR 51.160–51.165 and 40 CFR 51.307.

Among other things, section 110 of the Act requires that SIP rules be enforceable and provides that the EPA

may not approve a SIP revision if it would interfere with any applicable requirements concerning attainment and reasonable further progress or any other requirement of the CAA. In addition, section 110(a)(2) and section 110(l) of the Act require that each SIP or revision to a SIP submitted by a state must be adopted after reasonable notice and public hearing.

Section 110(a)(2)(c) of the Act requires each SIP to include a permit program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. The EPA's regulations at 40 CFR 51.160–51.164 provide general programmatic requirements to implement this statutory mandate commonly referred to as the “minor NSR” or “general NSR” permit program. These NSR program regulations impose requirements for SIP approval of state and local programs that are more general in nature as compared to the specific statutory and regulatory requirements for nonattainment NSR permitting programs under Part D of title I of the Act.

Part D of title I of the Act contains the general requirements for areas designated nonattainment for a NAAQS (section 172), including preconstruction permit requirements for new major sources and major modifications proposing to construct in nonattainment areas (section 173).

Additionally, 40 CFR 51.165 sets forth the EPA's regulatory requirements for SIP-approval of a nonattainment NSR permit program.

The protection of visibility requirements that apply to New Source Review programs are contained in 40 CFR 51.307. This provision requires that certain actions be taken in consultation with the local Federal Land Manager if a new major source or major modification may have an impact on visibility in any mandatory Class I Federal Area.

Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act, which only applies in nonattainment areas, prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

The EPA has reviewed the submitted rule in accordance with the rule

evaluation criteria described above. With respect to procedures, based on our review of the public process documentation included in the June 12, 2017 submittal, we are proposing to approve the submitted rule in part because we have determined that the BCAQMD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of this rule, in accordance with the requirements of CAA sections 110(a)(2) and 110(l). The amendment of Rule 432 now also includes ammonia as a potential precursor to PM<sub>2.5</sub>, thus resolving the limited disapproval issue from the December 2016 action. Our TSD, which can be found in the docket for this rule, contains a more detailed discussion of the approval criteria.

#### C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until April 23, 2018. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally-enforceable SIP.

#### III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the BCAQMD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New Source Review, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: March 9, 2018.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 447

[CMS-2406-P]

RIN 0938-AT41

#### Medicaid Program; Methods for Assuring Access to Covered Medicaid Services—Exemptions for States With High Managed Care Penetration Rates and Rate Reduction Threshold

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the process for states to document whether Medicaid payments in fee-for-service systems are sufficient

to enlist providers to assure beneficiary access to covered care and services consistent with the statute. States have raised concerns over the administrative burden associated with the current requirements, particularly for states with high rates of Medicaid managed care enrollment. This proposed rule would provide burden relief and address those concerns.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 22, 2018.

**ADDRESSES:** In commenting, please refer to file code CMS-2406-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2406-P, P.O. Box 8016, Baltimore, MD 21244-8016. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2406-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Silanskis, (410) 786-1592, [Jeremy.Silanskis@cms.hhs.gov](mailto:Jeremy.Silanskis@cms.hhs.gov).

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments.

## I. Executive Summary and Background

### A. Executive Summary

#### 1. Purpose

Current regulations at 42 CFR 447.203(b) require states to develop and submit to CMS an access monitoring review plan (AMRP) for Medicaid services provided through a fee-for-service (FFS) delivery system. The AMRP must be updated at least every 3 years and address the following categories of Medicaid services: Primary care services (including those provided by a physician, federally qualified health center (FQHC), clinic or dental care); physician specialist services (for example, cardiology, radiology, urology); behavioral health services (including mental health and substance use disorder); pre- and post-natal obstetric services (including labor and delivery); and home health. The AMRP must identify a data-driven process to review access to care and address: The extent to which beneficiary needs are fully met; the availability of care through enrolled providers; and changes in beneficiary service utilization. Additionally, when states reduce rates for other Medicaid services, they must add those services to the AMRP and monitor the effects of the rate reductions for 3 years. Section 447.204 requires states to undertake a public process and submit specific information regarding access to care when proposing to reduce or restructure Medicaid provider payment rates. This proposed rule would provide an exemption to the regulatory requirements in §§ 447.203(b)(1) through (6) and 447.204(a) through (c) for states with comprehensive, risk-based Medicaid managed care enrollment rates above 85 percent of the total covered population under a state’s Medicaid program, including managed care comprehensive risk contracts under a state’s section 1115 Medicaid demonstration. The proposed rule would also provide an exemption to the regulatory requirements in §§ 447.203(b)(6) and 447.204(a) through (c) for states that submit state plan amendments (SPAs) to reduce rates or restructure payments where the overall reduction is 4 percent or less of overall spending within the affected state plan service category for a single state fiscal year (SFY) and 6 percent or less over 2 consecutive SFYs. Additionally, the proposed rule would modify the requirements in § 447.204(b)(2) so that, for SPAs that reduce or restructure Medicaid payment rates, states would be required to submit to CMS an assurance that data indicates current access is consistent with