



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0322; FRL-9955-16-Region 9]

**Approval and Limited Approval and Limited Disapproval of California State
Implementation Plan Revisions; Butte County Air Quality Management District;
Stationary Source Permits**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing action on three permitting rules submitted as a revision to the Butte County Air Quality Management District (BCAQMD) portion of the California State Implementation Plan (SIP). We are finalizing a limited approval and limited disapproval of one rule; we are finalizing approval of two permitting rules; and we are deleting ten rules from the SIP. These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution. This limited disapproval will trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action.

DATES: This rule will be effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2016-0322. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Thien Khoi Nguyen, EPA Region IX, (415) 947-4120, nguyen.thien@epa.gov.

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

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I. Proposed Action

On August 19, 2016 (81 FR 55402), the EPA proposed a limited approval and limited disapproval (LA/LD) or a full approval (as noted in the table) of the following rules that were submitted for incorporation into the Butte County portion of the California SIP.

Table 1 – Submitted NSR Rules

Rule #	Rule Title	Adopted	Submitted	Proposed Action
400	Permit Requirements	04/24/14	11/06/14	Full Approval
401	Permit Exemptions	04/24/14	11/06/14	Full Approval
432	Federal New Source Review	04/24/14	11/06/14	LA/LD

We proposed a full approval of Rules 400 and 401 as part of BCAQMD’s general NSR permitting program because we determined that these rules meet the relevant CAA requirements.

We proposed a limited approval of Rule 432 because we determined that the rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval of Rule 432 because we determined that the rule does not fully satisfy CAA section 189(e) requirements for regulation of PM_{2.5} precursors. The rule does not specify ammonia as a PM_{2.5} precursor and the demonstration provided by Butte County as part of its NSR program submittal is not adequate to allow the Administrator to determine whether potential new major sources and major modifications of ammonia emissions will or will not contribute significantly to PM_{2.5} levels that exceed the standard in the area. We also proposed to remove ten existing rules from the SIP, as the submitted rules replaced the content of these pre-existing rules in the SIP.

The EPA also proposed to find that it is acceptable for BCAQMD to not incorporate the NSR Reform provisions of 40 CFR 51.165 into its NSR permit program because BCAQMD's permitting program will not be any less stringent than the federal permitting program. In addition, the EPA proposed to find that Rules 400, 401 and 432 meet the statutory requirements for SIP revisions as specified in sections 110(l) and 193 of the CAA.

II. EPA Action

No comments were submitted. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing approval of Rule 400 and Rule 401, and finalizing a limited approval and limited disapproval of Rule 432 into the BCAQMD portion of the California SIP. This action will incorporate the submitted rules into the SIP, including those provisions identified as deficient. The approval of Rule 432 is limited because the EPA is simultaneously finalizing a limited disapproval of Rule 432 under section 110(k)(3). This limited disapproval will trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves

subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action.

Note that Rule 432 has been adopted by the BCAQMD, and the EPA's final limited disapproval will not prevent the local agency from enforcing it. The limited disapproval also will not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:

<http://www.epa.gov/nsr/ttnsr01/gen/pdf/memo-s.pdf>.

In addition, because we are finalizing our proposed action, we are removing existing Rules 4-4, 401, 402, 403, 405, 406, 407, 420, 421 and 424 from the Butte County portion of the California SIP.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the BCAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and in hard copy at the U.S. Environmental Protection Agency, Region IX (Air -3), 75 Hawthorne Street, San Francisco, CA, 94105-3901.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not

impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

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 **[insert date 60 days after the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 31, 2016.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (b)(15), (c)(168)(i)(A)(8) and (9), (c)(222)(i)(E)(2), and (c)(457)(i)(C)(2), (3) and (4) to read as follows:

§52.220 Identification of plan – in part.

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(b) * * *

(15) Butte County Air Quality Management District.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted with replacement paragraphs (c)(457)(i)(C)(2) and (3), respectively: Rule 405 “Permit Conditions” and Rule 04-04 “Exemptions from Permit Requirements.”

(c) * * *

(168) * * *

(i) * * *

(A) * * *

(8) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(A)(1) of this section and now deleted with replacement in paragraph (c)(457)(i)(C)(2): Rule 401 “General Requirements,” Rule 402 “Authority to Construct,” Rule 406 “Emission Calculations,” Rule 407 “Anniversary Date,” Rule 420 “Standards for Granting Applications,” and Rule 421 “Conditional Approval”.

(9) Previously approved on May 2, 2001 in paragraph (c)(168)(i)(A)(4) of this section and now deleted with replacement in paragraph (c)(457)(i)(C)(2): Rule 424 “State Implementation Plan.”

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(222) * * *

(i) * * *

(E) * * *

(2) Previously approved on May 2, 2001 in paragraph (c)(222)(i)(E)(1) of this section and now deleted with replacement in paragraph (c)(457)(i)(C)(2): Rule 403 “Permit to Operate.”

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(457) * * *

(i) * * *

(C) * * *

(2) Rule 400, “Permit Requirements,” amended on April 24, 2014.

(3) Rule 401, “Permit Exemptions,” amended on April 24, 2014.

(4) Rule 432, “Federal New Source Review,” amended on April 24, 2014.

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