Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

VIII. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to a State, local and/or tribal government(s) in the aggregate. The USEPA must also develop a plan with regard to small governments that would be significantly or uniquely affected by the rule.

Because this proposed rule if finally adopted is estimated to result in the expenditure by State, local and tribal governments or the private sector of less than $100 million in any one year, USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost effective, or least burdensome alternative and because small governments will not be significantly or uniquely affected by this rule, USEPA is not required to develop a plan for small governments. Further, this proposed rule if finally adopted only approves existing State regulations; it imposes no new requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Lead, Carbon monoxide, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 15, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–9914 Filed 4–19–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 157–0007; FRL–5460–7]

Clean Air Act Approval and Promulgation of New Source Review and Prevention of Significant Deterioration Implementation Plan for Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve with a contingency, and disapprove in the alternative Monterey Bay Unified Air Pollution Control District (District) Rules 207 and 215 for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or Act) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). Rules 207 (Review of New and Modified Sources) and 215 (Banking of Emission Reductions) were submitted by the State of California on behalf of the District as a requested State Implementation Plan (SIP) revision to satisfy certain Federal requirements for an approvable nonattainment new source review SIP. This submittal also satisfies the requirements for a Prevention of Significant Deterioration (PSD) program. This proposed approval is contingent upon the District correcting existing deficiencies in its NSR and PSD submittal before EPA promulgates a final rulemaking on this submittal. Should the District fail to correct all deficiencies in this submittal, then this notice will serve as a proposed disapproval of the submittal.

DATES: Comments on this proposed action must be received in writing by May 22, 1996.

ADDRESSES: To submit comments or receive further information, please contact Steve Ringer, Environmental Engineer, New Source Section, Air & Toxics Division (A–5–1), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: (1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; (2) Air Resources Board, 2020 L Street, Sacramento, CA 95814; (3) Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey CA 93940.

FOR FURTHER INFORMATION CONTACT: Steve Ringer (415) 744–1260.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

The District held a public hearing on May 17, 1995 to entertain public comment on rules 207 and 215. On May 17, 1995, the rules were adopted by the District Board of Directors and submitted to the State. On August 10, 1995 the rules were submitted to EPA as a proposed revision to the California SIP.

EPA deemed the submittal complete on October 4, 1995. The submittal has since been reviewed and found to be complete but lacking certain requirements that would make it fully approvable. The District has, however, committed to correct the deficiencies described below and submit a rule with these changes for inclusion into the SIP. Therefore, contingent on the submittal of a fully approvable SIP revision, as described below, EPA proposes to approve the District's nonattainment NSR and attainment PSD SIP submittal. If the District fails to correct the deficiencies in this submittal, then EPA's final action will be a disapproval.

Summary of Rule Contents

The Monterey Bay Unified Air Pollution Control District submitted to EPA for adoption into the applicable NSR SIP Rules 207 (Review of New or Modified Sources) and 215 (Banking of Emissions Reductions). Rule 207 is intended to replace existing NSR SIP Rule 207 (Review of New or Modified Source); and Rule 215 is a new addition to the existing SIP.

These submitted rules constitute the District's new source permitting

regulations. Rule 207 consists of definitions, requirements, including applicability, major source definitions, offsets, increment analysis, and Lowest Achievable Emission Rate/Best Available Control Technology. Rule 215 establishes procedures for the creation, banking, and use of emission reduction credits. This last rule has indirect bearing on new source review, as these credits can be obtained by new sources and used as offsets.

Within the District, Monterey County, San Benito County, and Santa Cruz County are currently designated as Moderate nonattainment for Ozone. All other areas within the District are designated as attainment or unclassifiable with respect to the NAAQS. District nonattainment rules must therefore apply to all major new or modified stationary sources proposing to emit VOC or NOx in the nonattainment areas noted above. The nonattainment provisions must also apply to any source which would contribute to a violation of the NAAQS. The PSD provisions submitted by the District apply to major new or modified stationary sources proposing to emit attainment pollutants.

The Clean Air Act requirements are found at sections 172 and 173 for nonattainment NSR permitting and at section 165 for PSD permitting. With certain exceptions, described below, the District's submittal satisfies these requirements. For a detailed description of how the submitted rule meets the applicable requirements, please refer to EPA's technical support document.

Rule Deficiencies That Must Be Corrected

Rule 207

Section 4.2.9: Currently this section states that ''all emission reductions must be in effect and enforceable by the time the new or modified source commences operation''. However, section 173(a) of the Clean Air Act requires that any emission reduction required as a precondition of the issuance of a permit shall be made federally enforceable prior to permit issuance. Therefore, the District must change this language to meet the above Clean Air Act requirement.

Section 4.3.3.2: This section allows a source to obtain offsets from a different air basin if the applicant provides them at the stated ratios or at a ratio and distance approved by the District as long as the source demonstrates a net air quality benefit. However, Section 173(c) of the Clean Air Act requires that emission reductions obtained from another nonattainment area may be used only if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located, and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. Thus, the rule should have language which explicitly requires the two conditions above.

Proposed Action

EPA is proposing to approve, with disapproval in the alternative, the plan revisions submitted by the California Resources Board on behalf of Monterey Bay Unified Air Pollution Control District on August 10, 1995. Full approval as a final action on these rules is contingent upon the District making the required changes listed above.

If the specified changes are not made before EPA's final action on this submittal, then EPA's final action will be a disapproval. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of the Act (see 57 FR 13566–67). As provided under section 179(a) of the Act, the District would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose sanctions. If the District does not correct its SIP deficiencies within 18 months, then section 179(a)(4) requires the immediate application of sanctions. According to section 179(b), sanctions can take the form of a loss of highway funds or a two to one emissions offset ratio. Once the Administrator applies one of the section 179(b) sanctions, the State will then have an additional six months to correct any deficiencies. Section 179(a)(4) requires that both highway and offsets sanctions must be applied if any deficiencies are still not corrected after the additional six month period.

EPA is requesting comments on all aspects of the requested SIP revision and EPA's proposed rulemaking action. Comments received by the date indicated above will be considered in the development of EPA's final rule.

Administrative Review

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2). The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. EPA has determined that the approval proposed in this document does not include such a federal mandate, as this proposed federal action would approve pre-existing requirements under state or local law, and would impose no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, hydrocarbons, intergovernmental relations, new source review, nitrogen dioxide, particulate matter, reporting and record-keeping requirements, sulfur dioxide, and volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 10, 1996.
Felicia Marcus,
Regional Administrator.
[FR Doc. 96–9848 Filed 4–19–96; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–805–P]

RIN 0938–AG68

Medicare and Medicaid Programs; New Payment Methodology for Routine Extended Care Services Provided in a Swing-Bed Hospital

AGENCY: Health Care Financing Administration (HCFA), HHS.
ACTION: Proposed Rule.

SUMMARY: This proposed rule would revise the regulations governing the methodology for payment of routine extended care services furnished in a swing-bed hospital. Medicare payment for these services is determined based on the average rate per patient day paid by Medicare for these same services provided in freestanding skilled nursing facilities (SNFs) in the region in which the hospital is located. The reasonable cost for these services is the higher of the reasonable cost rates in effect for the current calendar year or for the previous calendar year. In addition, this proposed rule would revise the regulations concerning the method used to allocate hospital general routine inpatient service costs for purposes of determining payments to swing-bed hospitals. These changes are necessary to conform the regulations to section 1883 of the Social Security Act (the Act), and section 4008(j) of the Omnibus Budget Reconciliation Act of 1990.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 21, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–805–P, P.O. Box 7517, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–805–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Katie Walker (410) 786–7278.

SUPPLEMENTARY INFORMATION:

I. Background

Frequently, hospitals participating in Medicare and Medicaid, particularly those located in rural areas, have provided both inpatient acute and long-term care in the same facility. However, Medicaid regulations at 42 CFR 440.40 require that long-term care be provided in a separately identifiable ''distinct-part'' unit.

Before the enactment of the Omnibus Budget Reconciliation Act of 1980 (Public Law 96–499), small rural hospitals had difficulty in establishing separately identifiable units for Medicare and Medicaid long-term care because of limitations in their physical plant and accounting capabilities. These hospitals often had an excess of hospital beds, while their communities had a scarcity of long-term care beds in Medicare and Medicaid participating facilities. To alleviate this problem, Congress enacted section 904 of Public Law 96–499, known as the ''swing-bed provision,'' which authorized a cost-efficient means of providing nursing home care in rural communities. This provision added sections 1883 and 1913 of the Social Security Act (the Act), under which certain rural hospitals with fewer than 50 beds could use their inpatient facilities to furnish long-term care services to Medicare and Medicaid patients. These hospitals are thus permitted to vary the level of care they provide in response to changing patient needs by using the same bed to furnish hospital services at one time and SNF services at another.

Hospitals with approved swing-bed programs that furnished long-term care services were paid at rates that were deemed appropriate for those services and were generally lower than hospital rates. Medicare payment for routine SNF services was made at the average Statewide Medicaid rate for the previous calendar year. Payment for ancillary services was made based on reasonable cost.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) (Public Law 100–203) was enacted. Section 4005(b) of OBRA 1987 amended section 1883(b)(1) of the Act to provide for an expansion of the existing Medicare swing-bed program to include rural hospitals with more than 49 but fewer than 100 beds, effective for swing-bed agreements entered into after March 31, 1988. Although rural hospitals having more than 49 beds but fewer than 100 beds can be swing-bed hospitals, they are subject to additional payment limitations that do not apply to the smaller swing-bed hospitals.

Specifically, section 1883(d) of the Act states that Medicare payment for SNF services furnished by hospitals with more than 49 beds but fewer than 100 beds may not be made either for: (1) extended care services that are furnished to a swing-bed hospital SNF patient more than 5 days (excluding weekends and holidays) after a bed in a SNF becomes available in the geographic region, unless the patient's physician certifies within the 5-day period that the transfer of the patient is not medically appropriate; or (2) days of SNF care in a cost reporting period once Medicare covered days of SNF care exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital during that period. Payment will, however, continue to be made for patients who are receiving SNF care at the time the limit is reached.

Also, sections 4201(a)(3), 4204, 4211(h)(9), and 4214 of OBRA 1987 provide that effective with services furnished on or after October 1, 1990, the terms ''skilled nursing facilities'' (SNFs) and ''intermediate care facilities'' (ICFs) would no longer be used for the purpose of certifying a facility for the Medicaid program. Instead, they would be replaced by the term ''nursing facility'' (NF). Before that date, under the Medicaid program, a swing-bed hospital could furnish SNF-type, as well as ICF-type, services to non-Medicare patients. Now, the NF level of care encompasses services that were previously known as SNF-type and ICF-type services. Thus, for purposes of the Medicaid program, facilities are no longer certified as ICFs but instead are certified only as NFs, and can provide services as defined in section 1919(a)(1) of the Act. Effective October 1, 1990, these long-term care services furnished by swing-bed hospitals to Medicaid and