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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2007-1037; FRL-9506-8]

Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 PM_{2.5} and 8-Hour Ozone NAAQS: “Significant Contribution,” “Interference with Maintenance,” and “Interference with Prevention of Significant Deterioration” Requirements; Revisions to Regulation No. 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of a State Implementation Plan (SIP) revision submitted by the State of Colorado for the purpose of addressing the “good neighbor” provisions of Clean Air Act (“Act” or “CAA”) section 110(a)(2)(D)(i) for the 1997 8-hour ozone National Ambient Air Quality Standards (“NAAQS” or “standards”) and the 1997 fine particulate matter (“PM_{2.5}”) NAAQS. This SIP revision addresses the requirement that the State of Colorado's SIP (“Interstate Transport SIP”) have adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. In this action, EPA is approving the Colorado Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i) that emissions from Colorado sources do not significantly contribute to nonattainment of the 1997 PM_{2.5} NAAQS in any other state, interfere with maintenance of the 1997 PM_{2.5} NAAQS by any other state, or interfere with any other state's required measures to prevent significant deterioration of air quality for the 1997 PM_{2.5} and 8-hour ozone NAAQS. EPA is also approving certain revisions to Colorado Regulation No. 3 submitted by the State of Colorado in separate prior submissions. This action is being taken under section 110 of the CAA.

EFFECTIVE DATE: This final rule is effective [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2007-1037. Documents related to EPA's December 7, 2005 proposed approval of changes to Colorado Regulation No. 3 (70 FR 72744) can be found in a docket under Docket ID No. R08-OAR-2005-CO-0003. All documents in the dockets are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 either electronically through www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iii) The initials SIP mean or refer to State Implementation Plan.

(iv) The words Colorado and State mean the State of Colorado.

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I. Background

Colorado Interstate Transport SIP for the 1997 8-hour Ozone and PM_{2.5} NAAQS

On July 18, 1997, EPA promulgated new NAAQS for ozone and for PM_{2.5}. Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its “Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and

PM_{2.5} National Ambient Air Quality Standards” (“2006 Guidance”).¹ The 2006 Guidance recommends ways states may, in their submissions, meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and PM_{2.5} standards.

As identified in the 2006 Guidance, the “good neighbor” provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) identifies four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with required measures to prevent significant deterioration of air quality in any other state; or (4) interfere with efforts to protect visibility in any other state. Requirements (1) and (2) are found under 110(a)(2)(D)(i)(I), and requirements (3) and (4) are found under 110(a)(2)(D)(i)(II).

On June 11, 2008, the State of Colorado submitted to EPA an Interstate Transport SIP addressing all four requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and PM_{2.5} NAAQS. In response to EPA’s concerns regarding the June 11, 2008 submission, the State later submitted two superseding interstate transport SIP revisions: (a) a June 18, 2009 submission addressing requirements (1) and (2) of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS; and (b) a March 31, 2010 submission addressing requirements (3) and (4) for the 1997 8-hour ozone NAAQS and requirements (1) through (4) for the 1997 PM_{2.5} NAAQS. EPA approved Colorado’s Interstate Transport SIP with respect to the “significant contribution to

¹ Memorandum from William T. Harnett entitled, “Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards” (Aug. 15, 2006).

nonattainment” and the “interfere with maintenance” requirements for the 1997 8-hour ozone NAAQS in final rule actions published June 3 and November 22, 2010 (75 FR 31306; 75 FR 71029). EPA approved Colorado’s Interstate Transport SIP with respect to the “interfere with visibility” requirement for the 1997 8-hour ozone and PM_{2.5} NAAQS on April 20, 2011 (76 FR 22036).

After those actions, the pending portions of Colorado’s Interstate Transport SIP are those that address requirements (1), (2), and (3) for the 1997 PM_{2.5} NAAQS and requirement (3) for the 1997 8-hour ozone NAAQS. On April 19, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Colorado (76 FR 21835) to act on the pending portions. Specifically, in the NPR EPA proposed approval of the language and demonstration of the March 31, 2010 submission that addresses three requirements of section 110(a)(2)(D)(i) with respect to the 1997 PM_{2.5} NAAQS: (1) prohibition of significant contribution to nonattainment of the NAAQS in any other state, (2) prohibition of interference with maintenance of the NAAQS by any other state, and (3) prohibition of interference with other states’ required measures to prevent significant deterioration of air quality. EPA is also approving the language and demonstration that addresses requirement (3) of section 110(a)(2)(D)(i)—prohibition of interference with other states’ required measures to prevent significant deterioration of air quality—with respect to the 1997 8-hour ozone NAAQS.

Colorado Regulation No. 3, Part D: New Source Review and Prevention of Significant Deterioration (PSD)

The 2006 Guidance states that the interference with PSD requirement of section 110(a)(2)(D)(i)(II) may be met by the State’s confirmation in a SIP submission that new major

sources and major modifications in the State are subject to PSD and (if the State contains a nonattainment area for the relevant pollutant) Nonattainment New Source Review (NNSR) programs that implement the relevant standards according to current requirements.² Colorado's SIP-approved PSD and NNSR programs are contained in Colorado Regulation No. 3.

The State of Colorado submitted revisions to Colorado Regulation No. 3 on July 11, 2005, and submitted a supplement to those revisions on October 25, 2005, in response to EPA's concerns. The two submissions reorganized Regulation No. 3 by moving much of the previously approved language from other sections of Regulation 3 into the newly created Part D. The submissions then incorporated EPA's December 31, 2002 NSR Reform rule (67 FR 80186) into Part D, applying the reforms to both the State's PSD and NNSR programs. In its submissions, Colorado distinguished the revised language that incorporated NSR Reform from the language for the existing PSD and NSR programs (as reorganized into part D) by italicizing language that was to be added to the existing programs and by underlining language that was to be removed from the existing programs. Colorado's submission indicated that the addition of the italicized language and removal of the underlined language was to become effective only after EPA approved those changes into Colorado's SIP. EPA proposed approval of the October 25, 2005 submission on December 7, 2005 (70 FR 72744).³ EPA's proposed approval received extensive comments, and EPA has not yet finalized it.

On August 1, 2007, the State submitted to EPA revisions to Regulation No. 3. These revisions (among other things) updated the State's PSD and NNSR programs to meet the requirements of EPA's Phase 2 implementation rule for the 1997 8-hour ozone NAAQS ("Phase

² 2006 Guidance at 6.

³ The December 7, 2005 proposed approval and all supporting documentation, including both the July 11, 2005 and October 25, 2005 submissions can be found in docket R08-OAR-2005-CO-0003-FRL-8005-6.

2 Rule”) (70 FR 71612, Nov. 29, 2005). In the April 19, 2011 NPR (76 FR 21835) for today’s action, EPA proposed approval of portions of the August 1, 2007 submission, specifically the portions that implement the Phase 2 rule by treating nitrogen oxides as an ozone precursor. Because these portions are in part D of Regulation No. 3, which was created by the July 11, 2005 and the October 25, 2005 submissions, the August 1, 2007 revisions depend on those earlier submissions. Specifically, the August 1, 2007 revisions depend on the following parts: the reorganization of the existing PSD and NNSR programs into part D of Regulation No. 3, the introduction of the term “regulated NSR pollutant,” and the associated replacement in existing portions of the PSD and NNSR program of the regulatory phrase “air pollutant subject to regulation under the Act” with the term “regulated NSR pollutant.” As explained in greater detail in section IV below, in this action we also finalize the December 7, 2005 proposed approval of these portions of the July 11, 2005 and October 25, 2005 submissions.

Finally, the NPR included language explaining that EPA would approve the State’s 110(a)(2)(D)(i) submission for the PSD requirement in its entirety for both NAAQS if the State submitted a letter clarifying that its Interstate Transport SIP submission should be read to rely only on the portion of Colorado’s PSD program that remains approved after the PSD SIP Narrowing Rule (75 FR 82536, Dec. 30, 2010) took effect. The State submitted to EPA a letter making this clarification on May 10, 2011.⁴

II. Response to Comments

EPA received no comments on its April 19, 2011 proposed approval of portions of Colorado’s Interstate Transport SIP and of portions of Colorado’s August 1, 2007 submission addressing requirements of the Phase 2 Rule. EPA did receive comments on the December 7,

⁴This letter is available for view in the docket for this action.

2005 proposal to approve Colorado's July 11, 2005 and October 25, 2005 submissions. EPA does not consider any of these comments applicable to the portions of the December 7, 2005 proposal we are finalizing with today's action. However, to the extent that some comments could be understood to apply to the portions we are approving with this action, EPA addresses these particular comments below. These comments fell into three categories: 1) comments that argued that approval would violate the requirements of section 110(l) of the Act; 2) comments that argued that approval would violate the requirements of section 193 of the Act; and 3) comments that generally (without a specific legal basis) opposed approval.

First, with regards to section 110(l), the only substantive change to Colorado's PSD and NNSR programs in the submissions that EPA approves today is the addition of the defined term "regulated NSR pollutant" and the use of that term in place of the previous regulatory phrase, "air pollutant subject to regulation under the Federal Act." As noted in the preamble to the NSR Reform rules, (67 FR at 80239-40), the effect of introducing the term "regulated NSR pollutant" was to exclude from the PSD program hazardous air pollutants (HAPS) listed under section 112 of the Act, except for HAPS that are a constituent or precursor of a more general pollutant regulated under section 108 of the Act. EPA explained that this change clarified which pollutants are covered under the PSD program and responded to the addition of section 112(b)(6) in the 1990 Clean Air Act Amendments.

Section 110(l) provides in relevant part: "The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress ..., or any other applicable requirement of [the Act]." The exclusion of HAPS from the PSD program to the extent described above does not affect any

applicable requirement concerning attainment and reasonable further progress, as those requirements are specific to criteria pollutants and their precursors. Furthermore, the exclusion does not interfere with any other applicable requirement; in fact, it implements the requirement of section 112(b)(6) of the Act. Finally, this revision does not relax any applicable requirements, and is merely a clarification of the applicability of the PSD program. Therefore, approval of the specified portions of the October 25, 2005 submission does not violate section 110(l).

Similarly, approval of these portions does not violate section 193 of the Act. Section 193 prohibits modification after November 15, 1990 of any “control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant ... unless the modification insures equivalent or greater emission reductions of such air pollutant.” As the introduction of the term “regulated NSR pollutant” leaves unchanged control requirements for criteria pollutants, the portions of the July 11, 2005 and October 25, 2005 submissions approved in this action do not violate the prohibition of section 193. Finally, in response to comments that generally (without a specific legal basis) opposed EPA’s proposed approval of the July 11, 2005 and October 25, 2005 submissions, EPA notes that section 110(k)(3) requires us to approve SIP submissions that meet all of the applicable requirements of the Act. Although we acknowledge the opposition to our approval of the 2005 submissions, the comments do not provide a basis for us to act otherwise.

III. Section 110(l)

Section 110(l) of the CAA prohibits EPA from approving a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further

progress towards attainment of the NAAQS or any other applicable requirements of the Act. As explained in section II above, EPA's approval of specific portions of the July 11, 2005 and October 25, 2005 submissions revising Regulation No. 3 does not violate section 110(l). EPA's approval of the Interstate Transport SIP also does not violate section 110(l), as the Interstate Transport SIP does not revise or remove any existing emissions limitation for any NAAQS, or any other existing substantive SIP provision relevant to the 1997 8-hour ozone or PM_{2.5} NAAQS. Finally, the portions of the August 1, 2007 submission acted on here, in treating NO_x as a precursor to ozone, make the Colorado SIP more stringent; EPA's approval of these portions therefore does not violate section 110(l).

IV. Final Action

EPA is approving portions of the Colorado Interstate Transport SIP revisions submitted by the State on March 31, 2010. Specifically, in this action EPA is approving the language and demonstration of the March 31, 2010 submission that addresses three requirements of section 110(a)(2)(D)(i) with respect to the 1997 PM_{2.5} NAAQS: (1) prohibition of significant contribution to nonattainment of the NAAQS in any other state, (2) prohibition of interference with maintenance of the NAAQS by any other state, and (3) prohibition of interference with other states' required measures to prevent significant deterioration of air quality. EPA is also approving the language and demonstration that addresses requirement (3) of section 110(a)(2)(D)(i)—prohibition of interference with other states' required measures to prevent significant deterioration of air quality—with respect to the 1997 8-hour ozone NAAQS. The reasons for this action are detailed in our notice proposing approval of the portions of the March 31, 2010 submission for these requirements (76 FR 21835). In brief, our analysis of the weight

of evidence indicated that emissions from Colorado do not have the impacts prohibited by the requirements (1) and (2) with respect to the 1997 PM_{2.5} NAAQS. In addition, we noted that a clarification by Colorado of its interpretation of EPA's interim guidance on use of PM₁₀ as a surrogate for PM_{2.5} allowed us to propose approval of Colorado's Interstate Transport SIP with regards to requirement (3) for the 1997 PM_{2.5} NAAQS. Finally, we explained that concurrent approval of the portions of the August 1, 2007 submittal (finalized below) implementing the Phase 2 Rule would allow us to approve the Interstate Transport SIP with regards to requirement (3) for the 1997 ozone NAAQS.

EPA is also approving certain revisions to Colorado's PSD and NNSR programs in this action. These revisions were submitted by the State on July 11, 2005 and October 25, 2005, and proposed for approval by EPA on December 7, 2005 (70 FR 72744); in part, the revisions reorganize the previously approved PSD and NNSR programs in Regulation 3 into Part D. With the exception of the provisions submitted in 2007 that implement the requirements of the Phase 2 Rule (listed in Table 2.) and that supersede the 2005 submittals, we are approving the following provisions from the 2005 submittals. We are generally approving the text in Part D that is plain or (except as described below) underlined; this language reflects the reorganization of the PSD and NNSR programs into Part D. EPA is also approving portions of Regulation 3 Part D that were added or revised by the State in response to EPA's December 31, 2002 NSR Reform rule and that were included in the July 11, 2005 and October 25, 2005 submissions. These particular portions were also proposed for approval in the December 7, 2005 NPR (70 FR 72744). Specifically, these portions are: 1) the addition of the term "regulated NSR pollutant" in italicized text (including when used in the phrase "With respect to any regulated NSR pollutant

emitted by any major stationary source”); and 2) the addition of italicized text and removal of underlined text that reflects the replacement of the term “air pollutant subject to regulation under the Federal Act” (or an equivalent phrase) with “regulated NSR pollutant.”

Table 1.

| Provision Location in Colorado's Current SIP Reg 3 (NA = not in current Colorado SIP) | Provision Location in Colorado's 4/16/2004 Reg 3 Revision | Provision Description | EPA is incorporating all or part of revision or addition into the SIP ⁵ | Equivalent Provision in 40 CFR 51.165 and 40 CFR 51.166 | Comment (if applicable, see footnote) |
|---|---|--|--|---|--|
| A - I.B.1. | D - II.A.1. | Actual emissions definition | Yes | 51.166(b)(21) 51.165(a)(1)(xii) | Note the reference in this definition to "I.B.1.a" should be to "II.A.1.a." and Colorado will correct this reference in a future revision of Regulation No. 3. See footnote 5 |
| A - I.B.7. | D - II.A.3. | Air Quality Related Value definition | Yes | NA | EPA is approving this definition. See footnote 2 |
| A - I.B.8. | A - I.B.7. | Allowable Emissions definition | No | 51.166(b)(16) 51.165(a)(1)(xi) | See footnote 1 |
| A - I.B.10. | D - II.A.5. | Baseline Area definition | Yes | 51.166(b)(15) | EPA is approving this definition. See footnote 2 |
| A - I.B.11. | D - II.A.6. | Baseline Concentration definition | Yes | 51.166(b)(13) | EPA is approving this definition. See footnote 2 |
| A - I.B.12. | D - II.A.8. | Best Available Control Technology definition | Yes | 51.166(b)(12) 51.165(a)(1)(xl) | EPA is approving this definition. See footnote 4 |
| A - I.B.15. | D - II.A.12. | Complete definition (for PSD/NSR purposes) | Yes | 51.166(b)(22) | EPA is approving this definition. The reference in II.A.12.a.(vii) of this definition to "III.G.4. of Part B" is not in the current codified SIP. See footnote 2 |
| A - I.B.21. | D - II.A.16. | Federal Land Manager definition | Yes | 51.166(b)(24) 51.165(a)(1)(xlii) | EPA is approving this definition. See footnote 2 |
| A - I.B.31. | D - II.A.19. | Innovative Control Technology definition | Yes | 51.166(b)(19) | EPA is approving this definition. |

⁵ When footnote 3 appears in the "comment" column for a provision which EPA is approving, we are only incorporating the language in that provision that was previously approved into the SIP and subsequently renumbered for the July 11, 2005 and October 25, 2005 submissions. The modified language for any such provision, which is italicized for additions and underlined for removals in the submissions, is not being addressed in this action and will be addressed in a future action. Similarly, when footnote 5 appears, we are only incorporating the language in that provision that was previously approved into the SIP and subsequently renumbered for the July 11, 2005 and October 25, 2005 submissions, and the modification to the extent that the term "regulated NSR pollutant" replaces the phrase "air pollutant regulated under the Federal Act" (or equivalent phrase), and not any other modified language.

| Provision Location in Colorado's Current SIP Reg 3 (NA = not in current Colorado SIP) | Provision Location in Colorado's 4/16/2004 Reg 3 Revision | Provision Description | EPA is incorporating all or part of revision or addition into the SIP ⁵ | Equivalent Provision in 40 CFR 51.165 and 40 CFR 51.166 | Comment (if applicable, see footnote) |
|---|---|--|--|---|--|
| | | | | | See footnote 2 |
| A - I.B.32. | D - II.A.21. | Lowest Achievable Emission Rate definition | Yes | 51.166(b)(52) 51.165(a)(1)(xiii) | EPA is approving the renumbering of this definition. See footnote 3 |
| A - I.B.33. | D - II.A.24. | Major Source Baseline Date definition | Yes | 51.166(b)(14)(i) | EPA is approving this definition. See footnote 2 |
| A - I.B.34. | D - II.A.26. | Minor Source Baseline Date definition | Yes | 51.166(b)(14)(ii) | EPA is approving this definition. See footnote 2 |
| A - I.B.35.b. | D - II.A.23. (except II.A.23.a, d(iii),(viii),(x), (xi), and (e) - see below) | Major Modification definition | Yes, except as noted below | 51.166(b)(2) 51.165(a)(1)(v) | EPA is approving the renumbering of all of II.23 (except sections D - II.A.23.d.(viii), (x), and (xi)), and, in II.A.23, prior to subsection II.A.23.a, the replacement of the term "air pollutant subject to regulation under the Federal Act or the State Act" with the term "regulated NSR pollutant." Note that the provision in II.A.23.e that references "section II.A.2" should reference "II.A.31" and Colorado will correct this reference in a future revision of Regulation 3. See Footnote 5 |
| N/A | D - II.A.23.d.(iii) | Use of an alternative fuel at a steam generating unit (part of Major Modification definition) | No | 51.166(b)(2)(iii)(d) 51.165(a)(1)(v)(C)(4)(i) v) | EPA is not taking action on this section at this time. See footnote 1 |
| N/A | D - II.A.23.d(viii) | Addition replacement or use of a PCP... (part of Major Modification definition) | No | 51.166(b)(2)(iii)(h) 51.165(a)(1)(v)(C)(8) | EPA is not taking action on this section at this time. See footnote 1 |
| N/A | D - II.A.23.d(x) | The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering... (part of Major Modification definition) | No, as noted | 51.166(b)(2)(j) | EPA is not taking action on this section at this time. See footnotes 1 and 7 |
| N/A | D - II.A.23.d(xi) | The reactivation of a very clean coal fired electric utility steam generating unit. (part of Major Modification definition) | No, as noted | 51.166(b)(2)(k) | EPA is not taking action on this section at this time. See footnotes 1 and 7 |
| N/A | D - II.A.23.e. | This definition shall not apply ... for a PAL | No | 51.166(b)(2)(iv) | EPA is not taking action on this section at this time.. |

| Provision Location in Colorado's Current SIP Reg 3 (NA = not in current Colorado SIP) | Provision Location in Colorado's 4/16/2004 Reg 3 Revision | Provision Description | EPA is incorporating all or part of revision or addition into the SIP ⁵ | Equivalent Provision in 40 CFR 51.165 and 40 CFR 51.166 | Comment (if applicable, see footnote) |
|---|---|--|--|---|--|
| | | (part of Major Modification definition) | | 51.165(a)(1)(v)(D) | Note that the reference in this definition should be to II.A.31 not II.A.2., and Colorado will correct this reference in a future revision of Regulation 3. See footnote 1 |
| A - I.B.36. | D - II.A.27. (except II.A.27.c.(iv) and II.A.27.g.(v)) | Net Emissions Increase definition | Yes, except as noted below | 51.166(b)(3) 51.165(a)(1)(vi) | Colorado has added additional language at II.A.27.c.(iii), and II.A.27.g.(i) EPA is approving the renumbering of this provision and the addition of the phrase "With respect to any regulated NSR pollutant emitted by a major stationary source," in II.A.27.a. Note that provision II.A.27.a.(i) references "I.A.4." However, there is no I.A.4. and this reference will be deleted by Colorado. See footnote 5 |
| N/A | D - II.A.27.c.(iv) | Net emissions increase at a clean unit (part of Net Emissions Increase definition) | No | 51.166(b)(3)(iii)(c) 51.165(a)(1)(vi)(C)(3) | EPA is not taking action on this part of the definition at this time. |
| N/A | D - II.A.27.g.(v) | Net emissions increase at a clean unit and pollution control project (part of Net Emissions Increase definition) | No | 51.166(b)(3)(vi)(d) 51.165(a)(1)(vi)(E)(5) | EPA is not taking action on this part of the definition at this time. |
| A - I.B.44 | A - I.B.35. | Potential to Emit definition | No | 51.166(b)(4) 51.165(a)(1)(iii) | EPA is not taking action on this definition. See footnote 1 |
| A - I.B.55. | D - II.A.43. | Secondary Emissions definition | Yes | 51.166.(b)(18) 51.165(a)(1)(viii) | EPA is approving the renumbering of this definition. See footnote 3 |
| A - I.B.57. | D - II.A.44. (except II.A.44.a) | Significant definition | Yes | 51.166.(b)(23) 51.165(a)(1)(x) | EPA is approving this definition. See footnote 2 |
| A - I.B.58. Major Stationary Source | D - II.A.25. | Major Stationary Source definition (introductory) | Yes, except as noted below | 51.166(b)(1)(i) 51.165(a)(1)(iv) | EPA is approving this definition except for section D - II.A.25.b. See footnote 2 |
| A - I.B.58.a. | D - II.A.25.b. | For the purpose of determining whether a source in a nonattainment area is subject... (part of Major Stationary Source definition) | No, as noted | 51.165(a)(1)(iv)(A)(1) | EPA is not taking action, at this time, on this part of the definition. Provision A - I.B.58.a. in the current codified SIP |

| Provision Location in Colorado's Current SIP Reg 3 (NA = not in current Colorado SIP) | Provision Location in Colorado's 4/16/2004 Reg 3 Revision | Provision Description | EPA is incorporating all or part of revision or addition into the SIP ⁵ | Equivalent Provision in 40 CFR 51.165 and 40 CFR 51.166 | Comment (if applicable, see footnote) |
|---|---|---|--|---|---|
| | | | | | remains in effect as part of the definition of Major Stationary Source. See footnote 1 |
| A - I.B.58.b. | D - II.A.25.a. | For the purpose of determining whether a source in an attainment or unclassifiable area (part of Major Stationary Source definition) | Yes | 51.166(b)(1)(i)(a) | EPA is approving this definition. See footnote 2 |
| A - I.B.58.c. | D - II.A.25.c. | Major stationary source includes any physical change that would occur at a stationary source... (part of Major Stationary Source definition) | Yes | 51.166(b)(1)(i)(c) 51.165(a)(1)(iv)(A)(2) | EPA is approving this definition. See footnote 2 |
| A - I.B.58.d. | D - II.A.25.d. | A major stationary source that is major for volatile organic compounds shall be considered major... (part of Major Stationary Source definition) | No | 51.166(b)(1)(ii) 51.165(a)(1)(iv)(B) | EPA is not approving this definition. See footnote 1 |
| A - I.B.58.f. | D - II.A.25.e. | The fugitive emissions of a stationary source shall not be included (part of Major Stationary Source definition) | Yes | 51.166(b)(1)(iii) 51.165(a)(1)(iv)(C) | EPA is approving this definition. See footnote 2 |
| A - I.B.58.e. | D - II.A.25.f. | Emissions caused by indirect air pollution sources (part of Major Stationary Source definition) | Yes | NA | EPA is approving this definition. The reference in this definition to "I.B.22. of Part A" is at is at A - I.B.58. in the current codified SIP. See footnote 2 |
| A - I.B.58.g. | D - II.A.25.g. | A major stationary source in the Denver Metro PM10... (part of Major Stationary Source definition) | No | NA | EPA is not acting on this definition in this action. This definition was not included in Colorado's October 25, 2005 submission of Regulation No. 3, and was therefore proposed for approval erroneously in EPA's December 7, 2005 proposed approval. See footnote 1 |
| N/A | D - III. | Permit Review Procedures | Yes | NA | EPA is approving this section. See footnote 6 |
| N/A | D - III.A. | Major Stationary Sources must apply for CP or OP | Yes | NA | EPA is approving this section. See footnote 6 |
| B - IV.B.5. | D - III.B. | Process PSD applications w/in 12 months | Yes | NA | EPA is approving this section. |

| Provision Location in Colorado's Current SIP Reg 3 (NA = not in current Colorado SIP) | Provision Location in Colorado's 4/16/2004 Reg 3 Revision | Provision Description | EPA is incorporating all or part of revision or addition into the SIP ⁵ | Equivalent Provision in 40 CFR 51.165 and 40 CFR 51.166 | Comment (if applicable, see footnote) |
|---|---|--|--|---|---|
| | | | | | See footnote 2 |
| N/A | D - IV. | Public Comment Requirements | Yes | 51.166(q) | EPA is approving this section. See footnote 6 |
| N/A | D - IV.A. | Public Notice | Yes | 51.166(q) | Copied from Part B, IV.C.4. of current codified SIP. EPA is approving this section. The reference in D - IV.A. to "III.C.3. of Part B" is at B - IV.C.3. in the current codified SIP. See footnote 6 |
| B - IV.C.4. - from "For sources subject to the provisions of section IV.D.3." to "The newspaper notice" | D - IV.A.1. | Public notice of NSR and PSD permit applications | Yes | 51.166(q)(ii) and (iv) | EPA is approving this section. See footnote 2 |
| B - IV.C.4.f. | D - IV.A.2. | Additionally, for permit applications...(request comment on) | Yes | 51.166(q)(iii) | EPA is approving this section. See footnote 2 |
| B - IV.C.5. | D - IV.A.3. | Within 15 days after prepare PA | Yes | NA | EPA is approving this section. See footnote 2 |
| B - IV.C.6. | D - IV.A.4. | Hearing request for innovative control | Yes | NA | EPA is approving this section. See footnote 2 |
| B - IV.C.7. | D - IV.A.5. | Hearing request transmitted to commission | Yes | NA | EPA is approving this section. See footnote 2 |
| B - IV.C.8. | D - IV.A.6. | Commission shall hold public comment hearing | Yes | 51.166(q)(v) | EPA is approving this section. See footnote 2 |
| B - IV.C.9. | D - IV.A.7. | 15 days after division makes final decision on application | Yes | 51.166(q)(viii) | EPA is approving this section. See footnote 2 |
| B - IV.D.2. | D - V. | Requirements Applicable to Non-attainment Areas (Introductory) | Yes | NA | EPA is approving this section. See footnote 2 |
| B - IV.D.2.a. | D - V.A. | Major Stationary Sources | Yes | 51.165, Appx. S.IV.A. | EPA is approving this section. |

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|---|---|--|--|---|--|
| | | | | | The reference in D - V.A. to "III.D.1. of Part B" is at B - IV.D.1. in the current codified SIP. See footnote 2 |
| B - IV.D.2.a.(i) through (iii) | D - V.A.1. through 3. | Major Stationary Sources | Yes | 51.165, Appx. S.IV.A. Conditions 1 - 4 | EPA is approving this section. See footnote 2 |
| B - IV.D.2.a.(iii)(C) 2nd par | D - V.A.3.d. | With respect to offsets from outside nonattainment area | Yes | 51.165, Appx. S.IV.D. | EPA is approving this section. See footnote 2 |
| B - IV.D.2.a.(iv) | D - V.A.4. | The permit application shall include an analysis of alternative sites... | Yes | 51.165, Appx. S.IV.D. | EPA is approving this section. See footnote 2 |
| B - IV.D.2.a.(v) | D - V.A.5. | Offsets for which emission reduction credit is taken... | Yes | 51.165, Appx. S.V.A. | EPA is approving this section. See footnote 2 |
| B - IV.D.2.a.(vi) | D - V.A.6. | The applicant will demonstrate that emissions from the proposed source will not adversely impact visibility... | Yes | NA | EPA is approving this section. See footnote 2 |
| B - IV.D.2.b. | D - V.A.7. | Applicability of Certain Nonattainment Area Requirements | Yes | NA | EPA is approving this section. See footnote 2 |
| B - IV.D.2.b.(i) | D - V.A.7.a. | Any major stationary source in a nonattainment area... | Yes | NA | EPA is approving this section. See footnote 2 |
| B - IV.D.2.b.(ii) | D - V.A.7.b. | The requirements of section V.A. shall apply at such time that any stationary source... | Yes | 51.165(a)(5)(ii) | EPA is approving this section. See footnote 2 |
| N/A | D - V.A.7.c. | The following provisions apply to projects at existing emissions units... ("Reasonable possibility" provisions in nonattainment areas) (part of Applicability of Certain Nonattainment Area Requirements) | No | 51.165(a)(6) | EPA is not taking action on this provision at this time. See footnotes 1 |
| N/A | D - V.A.7.d. | documents available for review upon request (part of Applicability of Certain Nonattainment Area Requirements) | No | 51.165(a)(7) | EPA is not taking action on this section at this time. See footnote 1 |
| B - IV.D.2.c. (and subsections) | D - V.A.8. | Exemptions from Certain Nonattainment Area Requirements | Yes | 51.165, Appx. S.IV.B. | EPA is approving this section. See footnote 2 |

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|---|---|---|--|---|---|
| B - IV.D.3. | D - VI. | Requirements Applicable to Attainment Areas (Introductory) | Yes | NA | EPA is approving this provision. See footnote 2 |
| B - IV.D.3.a.(and subsections not listed below) | D - VI.A. | Major Stationary Sources and Major Modifications | Yes | 51.166(j) | EPA is approving this provision. The reference in D - VI.A. to "III.D.1. of Part B" is at B - IV.D.1. in the current codified SIP. See footnote 2 |
| B - IV.D.3.a.(i)(C) | D - VI.A.1.c. | For phased construction... | Yes | 51.166(j)(4) | EPA is approving the renumbering of this provision. See footnote 3 |
| B - IV.D.3.a.(iii)(D) | D - VI.A.3.d. | In general, the continuous air monitoring data | Yes | 51.166(m)(1)(iv) | EPA is approving this provision. See footnote 2 |
| B - IV.D.3.a.(iii)(D) | D - VI.A.4. | Post-construction monitoring | Yes | 51.166(m)(2) | EPA is approving this provision. Colorado has revised this provision to make post construction monitoring at the director's discretion as allowed by 51.166(m)(2). See footnote 2 |
| B - IV.D.3.a(vi) | D - VI.A.6 | Additional Impact Analysis | Yes | | EPA is approving the renumbering of this provision. See footnote 3 |
| B - IV.D.3.b. | D - VI.B. | Applicability of Certain PSD Requirements | Yes | NA | EPA is approving this provision. See footnote 2 |
| B - IV.D.3.b.(i) | D - VI.B.1. | The requirements of section VI.A. do not apply... | Yes | 51.166(i)(1) and (2) | EPA is approving this provision. See footnote 2 |
| B - IV.D.3.b.(ii) | D - VI.B.2. | The requirements contained in sections VI.A.2. through VI.A.4. | Yes | 51.166(i)(3) and (4) | EPA is approving this provision. See footnote 2 |
| B - IV.D.3.b.(iii) | D - VI.B.3. (including D - VI.B.3.b., c., and d.) | The division may exempt a proposed major stationary source or major modification from the requirements of sections VI.A.3. through VI.A.5. of this Part, with respect to monitoring for a particular pollutant if:... | Yes | 51.166(i)(5) | Colorado has reworded D - VI.B.3. and deleted unnecessary language. EPA is approving this provision. See footnote 2 |

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|---|---|--|--|---|---|
| | | | | | EPA is approving this provision. |
| B - IV.D.3.b.(iii)(A)(1)-(12) | D - VI.B.3.a.(i)-(ix) | deleted Mercury, Beryllium, Vinyl chloride | Yes | 51.166(i)(5)(i) | The deletion is consistent with section 112(b)(6) of the Act. See related discussion in section II, Response to Comments. See footnote 2 |
| B - IV.D.3.b.(iv) | D - VI.B.4. | The requirements of this Part D shall apply... | Yes | 51.166(i)(6) | EPA is approving this provision. See footnote 2 |
| N/A | D - VI.B.5. | The following provisions apply to projects at existing emissions units... ("Reasonable possibility" provisions PSD) (part of Applicability of Certain PSD Requirements) | No | 51.166(r)(6) | EPA is not taking action on this provision at this time. See footnote 1 |
| N/A | D - VI.B.6. | documents available for review upon request. (part of Applicability of Certain PSD Requirements) | No | 51.166(r)(7) | EPA is not taking action on this section at this time. See footnote 1 |
| B - IV.D.3.b.(v) | D - VI.B.7. | A stationary source or modification may apply... | Yes | 51.166(i)(9) | EPA is approving this provision. See footnote 2 |
| B - IV.D.3.c. | D - VI.C. | Notice to EPA | Yes | 51.166(p)(1) | EPA is approving this provision. See footnote 2 |
| B - IV.D.3.d. | D - VI.D. | Major Stationary Sources in attainment areas affecting nonattainment area | Yes | 51.165(b) | EPA is approving this section. The reference in D - VI.D. to "III.D.1. of Part B" is at B - IV.D.1. in the current codified SIP. See footnote 2 |
| B - IV.D.4. | D - VII. | Negligibly Reactive VOCs | Yes | 51.100(s) | EPA is approving this provision. See footnote 2 |
| B - V. | D - VIII. | Area Classifications | Yes, with the exception of D - VIII.B. | 51.166(e) | EPA is approving this provision with the exception of D - VIII.B. See footnote 2 |
| N/A | D - VIII.B. | All other areas of Colorado,... | No | NA | EPA is not taking action on this section at this time. |

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|---|---|--|--|---|---|
| | | (part of Area Classifications) | | | See footnote 1 |
| B - VI. | D - IX. | Redesignation | Yes | 51.166(e) | EPA is approving this provision. See footnote 2 |
| B - VII. | D - X. | Air Quality Limitations | Yes, with the exception of D - X.A.5 | 51.166(c) | EPA is approving this provision with the exception of D - X.A.5. See footnote 2 |
| N/A | D - X.A.5. | Increment Consumption Restriction (part of Air Quality Limitations) | No | NA | EPA is not taking action on this provision at this time. See footnote 1 |
| B - VIII. | D - XI. | Exclusions from Increment Consumption | Yes | 51.166(f) | EPA is approving this provision. See footnote 2 |
| B - IX. | D - XII. | Innovative Control Technology | Yes | 51.166(s) | EPA is approving this provision. See footnote 2 |
| B - X. | D - XIII. | Federal Class I Areas | Yes | 51.166(p) | EPA is approving this section. The reference in D - XIII.C. to "III.B. of Part B" is at B - IV.B. in the current codified SIP. See footnote 2 |
| B - XI. | D - XIV. | Visibility | No | NA | EPA is not taking action on this section at this time. See footnote 1 |
| N/A | A - I.B.13. | CEMS definition | No | 51.166(b)(43) 51.165(a)(1)(xxxiv) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | A - I.B.14. | CERMS definition | No | 51.166(b)(46) 51.165(a)(1)(xxxiv) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | A - I.B.15. | CPMS definition | No | 51.166(b)(45) 51.165(a)(1)(xxxiii) | EPA is not taking action on this definition at this time. |

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|---|---|---|--|--|---|
| | | | | | See footnote 1 |
| N/A | A - I.B.33. | Pollution Prevention definition | No | 51.166(b)(38) 51.165(a)(1)(xxvi) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | A - I.B.36. | PEMS definition | No | 51.166(b)(44) 51.165(a)(1)(xxxii) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - I.A. – I.A.1. | General Applicability (Introductory) | Yes | 51.165(a)(2)(iii)(A) and (B) | EPA is approving the language in section I.A.1 only . See footnote 6 |
| N/A | D – I.A.2. – I-A.3 | General Applicability (Continued) | No | 51.166(a)(7) (iv)(a)and (b) | EPA is not taking action on these sections at this time. See footnote 1. |
| N/A | D - I.B | Applicability Tests | No | 51.166(a)(7)(iv)(c), (d), and (f) 51.165(a)(2)(ii)(C), (D), and (F) | EPA is not taking action on this section at this time. The reference in D - I.B.5. to "I.B.26. of Part A" is at A - I.B.35.c. in the current codified SIP. See footnote 1 |
| N/A | D - I.B.3. | Emission tests at clean units (part of Applicability Tests) | No | 51.166 (a)(7)(iv)(e) 51.165(a)(2)(ii)(E) | EPA is not taking action on this provision at this time. See footnote 1 |
| N/A | D - I.B.4. second sentence | For example, for a project involves both an existing unit and a clean unit... (part of Applicability Tests) | No | 51.166(a)(7)(iv)(f) second sentence 51.165(a)(2)(ii)(F) second sentence | EPA is not taking action on this part of provision D-I.B.4. at this time. See footnote 1 |
| N/A | D - I.C. | For any major stationary source requesting, or operating under, a Plantwide Applicability Limitation... | No | 51.166 (a)(7)(v) 51.165(a)(2)(iii) | EPA is not taking action on this section at this time. See footnote 1 |
| N/A | D - I.D. | An owner or operator undertaking a Pollution Control Project... | No | 51.166 (a)(7)(vi) 51.165(a)(2)(iv) | EPA is not taking action on this provision at this time. See footnote 1 |
| N/A | D - II.A.2. | Actuals PAL Definition | No | 51.166(w)(2)(i) 51.165(f)(2)(i) | EPA is not taking action on this definition at this time. |

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|---|---|--|--|---|---|
| | | | | | See footnote 1 |
| N/A | D - II.A.4. | Baseline Actual Emissions definition | No | 51.166(b)(47) 51.165(a)(1)(xxxv) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.7. | Begin Actual Construction definition | No | 51.166(b)(11) 51.165(a)(1)(xv) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.9. | Clean Coal Technology definition | No | 51.166(b)(33) 51.165(a)(1)(xxiii) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.10. | Clean Coal Technology Demonstration Project definition | No | 51.166(b)(34) 51.165(a)(1)(xxiv) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.11. | Clean Unit definition | No | 51.166(b)(41) 51.165(a)(1)(xxix) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.13. | Construction definition | No | 51.166(b)(8) 51.165(a)(1)(xxviii) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.14. | Emissions Unit definition (for PSD/NSR purposes) | No | 51.166(b)(7) 51.165(a)(1)(vii) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.15. | Electric Utility Steam Generating Unit definition | No | 51.166(b)(30) 51.165(a)(1)(xx) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.17. | High Terrain definition | No | 51.166(b)(25) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.18. | Hydrocarbon Combustion Flare definition | No | 51.166(b)(31)(iv) 51.165(a)(1)(xv)(D) | EPA is not taking action on this definition at this time. See footnote 1 |

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|---|---|---|--|---|---|
| N/A | D - II.A.20. | Low Terrain definition | No | 51.166(b)(26) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.22. | Major Emissions Unit definition | No | 51.166(w)(2)(iv) 51.165(f)(2)(iv) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.28. | Nonattainment New Source Review definition | No | 51.165(a)(1)(xxx) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.29. | PAL Effective Date definition | No | 51.166(w)(2)(vi) 51.165(f)(2)(vi) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.30. | PAL Effective Period definition | No | 51.166(w)(2)(vii) 51.165(f)(2)(vii) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.31. | PAL Major Modification definition | No | 51.166(w)(2)(viii) 51.165(f)(2)(viii) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.32. | PAL Permit definition | No | 51.166(w)(2)(ix) 51.165(f)(2)(ix) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.33. | PAL Pollutant definition | No | 51.166(w)(2)(x) 51.165(f)(2)(x) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.34. | Plantwide Applicability Limitation (PAL) definition | No | 51.166(w)(2)(v) 51.165(f)(2)(v) | EPA is not taking action on this definition at this time. See footnote 1 |
| NA | D - II.A.35. | Pollution Control Project definition | No | 51.166(b)(31) 51.165(a)(1)(xxv) | EPA is not taking action on this definition at this time. |
| N/A | D - II.A.36. | Prevention of Significant Deterioration Permit definition | No | 51.166(b)(42) 51.165(a)(1)(xli) | EPA is not taking action on this definition at this time. |

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|---|---|--|--|---|---|
| | | | | | See footnote 1 |
| N/A | D - II.A.37. | Project definition | No | 51.166(b)(51) 51.165(a)(1)(xxxix) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.38. | Projected Actual Emissions definition | No | 51.166(b)(40) 51.165(a)(1)(xxviii) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.39. | Reactivation of Very Clean Coal-Fired EUSGU definition | No | 51.166(b)(37) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.40. (except II.A.40.c) | Regulated NSR Pollutant definition | Yes | 51.166(b)(49) 51.165(a)(1)(xxxvii) | EPA is approving this definition. See footnote 6 |
| N/A | D - II.A.41. | Replacement Unit definition | No | 51.166(b)(32) 51.165(a)(1)(xxi) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.42. | Repowering definition | No | 51.166(b)(36) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.45. | Significant Emissions Increase definition | Yes | 51.166(b)(39) 51.165(a)(1)(xxvii) | EPA is approving this definition. See footnote 6 |
| N/A | D - II.A.46. | Significant Emissions Unit definition | No | 51.166(w)(2)(xi) 51.165(f)(2)(xi) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.47. | Small Emissions Unit definition | No | 51.166(w)(2)(iii) 51.165(a)(1)(iii) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - II.A.48. | Temporary Clean Coal Demonstration Project definition | No | 51.166(b)(35) 51.165(a)(1)(xxii) | EPA is not taking action on this definition at this time. See footnote 1 |
| N/A | D - XV. | Clean Units | No | 51.166(t) and (u) | EPA is not taking action on this section at this time. |

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|--|---|-------------------------------------|--|---|--|
| | | | | 51.165(c) and (d) | See footnote 1 |
| N/A | D - XVI. | Pollution Control Projects | No | 51.166(v) 51.165(e) | EPA is not taking action on this section at this time. See footnote 1 |
| N/A | D - XVII. | Plantwide Applicability Limitations | No | 51.166(w) 51.165(f) | EPA is not taking action on this section at this time. The references in XVII.N.1.g and XVII.N.2.d. of this section to "I.B.38. of Part A" are at A - I.B.53. in the current codified SIP. Colorado has revised D -XVII.I.2. (application deadline) to 12 months prior to expiration instead of 6 months. Colorado has revised XVII.N.1. (Semi-Annual Report) to require submission of QA/QC data as requested, not as part of the semi annual report specified in 51.166(w)(14)(i)(c). See footnote 1 |
| <p>Footnote 1: We are not taking action on this provision with this rulemaking. Approval of the change to or addition of the provision is not a necessary prerequisite for our action on the August 1, 2007 submittal, or the provision was not proposed for approval in our December 7, 2005 notice. We will take final action on this provision in a subsequent action.</p> <p>Footnote 2: We are approving this change of an existing Regulation No. 3 provision because the provision has only been renumbered, contains nonsubstantive changes to the provision that do not effect the meaning of the rule and/or has been modified to move a definition that has already been approved into the SIP to a specific rule section in which the definition applies. This renumbered provision and all subsections within this provision (unless otherwise noted) supersede and replace the prior numbered rule and subsections in Colorado's federally approved SIP.</p> <p>Footnote 3: We are approving the renumbering of this existing provision. We are not taking action on the language in the provision that has been modified in the 2005 submissions. All language that has been added to the existing provision is italicized in the submission, and all language that has been deleted from the existing provision is underlined in the submission. We will address these additions and removals in subsequent actions.</p> | | | | | |

Footnote 4:

We are approving both the renumbering of the existing provision and the language in the provision that has been modified.

Footnote 5:

We are approving the renumbering of the existing provision, and the modification of the provision to the extent that the term “regulated NSR pollutant” replaces the phrase “air pollutant regulated under the Federal Act” (or equivalent phrase), but not any other modification of the provision.

Footnote 6:

We are approving the new provision.

Footnote 7:

Colorado has marked this part of the definition of Major Modification as underlined, meaning that the State intends it will only be effective until EPA approves the NSR Reform revisions for incorporation into the SIP. Colorado has since clarified that they intended that this provision remain as part of the definition of Major Modification as it applies to PSD sources located in attainment areas only, consistent with 40 CFR 51.166(b)(2)(j). If Colorado revises Regulation No. 3 to indicate this clarification prior to EPA taking final action, EPA proposes to approve this addition to the definition of Major Modification into the SIP.

EPA is also approving portions of the Regulation No. 3 revisions submitted to EPA by the State on August 1, 2007 that update the State’s PSD program to treat nitrogen oxides as an ozone precursor in accordance with the Phase 2 implementation rule for the 1997 8-hour ozone NAAQS (70 FR 71612, November 29, 2005). Other portions of the revisions submitted August 1, 2007 will be acted upon separately. The portions of the August 1, 2007 submission we are approving with this action are set out in the table below. As discussed above, this approval allows us to also finalize our concurrently proposed approval of the Colorado Interstate Transport SIP with respect to requirement (3) of section 110(a)(2)(D)(i) for the 1997 ozone NAAQS.

Table 2.

| Provision Location in Colorado's 8/1/07 Reg 3 Submission | Provision Location in Colorado's 7/11/05 and 10/25/05 Submission | Description of Provision – Language adopted for the 8/1/07 submission to conform to the Phase II Ozone Implementation Rule is italicized. | Corresponding Provision in 40 CFR 51.166 |
|--|--|--|--|
| D - II.A.22.a | D – II.A.23.a | Significant emissions increase or net emissions increase (at a major source) that is significant for VOCs <i>or NOx</i> is significant for ozone | 51.166 (b)(2)(ii) |
| D - II.A.24.d | D – II.A.25.d | Major source that is major for VOCs <i>or NOx</i> is considered major for ozone | 51.166 (b)(1)(ii) |
| D - II.A.38.c | D – II.A.40.c | <i>(E.G. volatile organic compounds and oxides of nitrogen are precursors for ozone)</i> | 51.166 (b)(49)(i) |
| D - II.A.42.a | D – II.A.44.a | Ozone: 40 tons per year of volatile organic compounds <i>or NOx</i> | 51.166 (b)(23)(i) |

The discrepancy in the numbering of the provisions is the result of removal of provisions in other SIP revisions submitted between the 2005 and 2007 submissions. In this action, EPA is treating the 2007 submission as revising the provisions as numbered in the 2005 submission. When EPA acts on the intervening submissions that changed the numbering, the discrepancy will be resolved.

V. Statutory and Executive Order Review

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, 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Public Law 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: May 31, 2011.

Carol Rushin,
Acting Regional Administrator,
Region 8.

Note: This document was received at the Office of the Federal Register on January 3, 2012.

40 CFR part 52 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 G-Colorado

2. Section 52.320 is amended by adding paragraph (c)(120) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(120) The State of Colorado submitted revisions on October 25, 2005 and August 1, 2007 to Colorado's 5 CCR 1001-5 Regulation Number 3, Part D. The October 25, 2005 submittal included a renumbering of Regulation Number 3. The incorporation by reference in paragraph (c)(120)(i)(A) on this section reflects the renumbered sections as of the October 25, 2005 submittal. Sections were removed from Part D between the October 25, 2005 and August 1, 2007 submittal. The incorporation by reference in paragraph (c)(120)(i)(B) of this section reflects the numbering of the sections as of the August 1, 2007 submittal.

(i) Incorporation by reference.

(A) 5 CCR 1001-5, Regulation 3, Stationary Source Permitting and Air Pollutant Emission Notice Requirements, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration, adopted April 16, 2004 and effective June 30, 2004:

(1) Section I, Applicability, Sections I.A., General Applicability; I.A.1;

(2) Section II, Definitions,

(i) II.A;

(ii) II.A.1, Actual Emissions; II.A.1.a (only the language that appears in plain or underlined text and not the language that appears as italicized text); II.A.1.b; II.A.1.c; II.A.1.e;

(iii) II.A.3, Air Quality Related Value;

(iv) II.A.5, Baseline Area;

(v) II.A.6, Baseline Concentration;

(vi) II.A.8, Best Available Control Technology (BACT) (the language that appears in plain or underlined text but not language that appears as italicized text, with the following exception – EPA is incorporating italicized text and is not incorporating underlined text when the combined effect of that action is to replace the phrase “air pollutant regulated under the Federal Act” (or an equivalent phrase) with the term “regulated NSR pollutant”);

(vii) II.A.12, Complete;

(viii) II.A.16, Federal Land Manager (FLM);

(ix) II.A.19, Innovative Control Technology;

(x) II.A.21, Lowest Achievable Emission Rate (LAER); II.A.21.a; II.A.21.b (only the language that appears in plain or underlined text and not the language that appears as italicized text);

(xi) II.A.23, Major Modification (the language that appears in plain or underlined text but not language that appears as italicized text, with the following exception – EPA is incorporating italicized text and is not incorporating underlined text when the combined effect of that action is to replace the phrase “air pollutant regulated under the Federal Act” (or an equivalent phrase) with the term “regulated NSR pollutant”); II.A.23.b; II.A.23.c; II.A.23.d; II.A.23.d(i);

II.A.23.d(ii); II.A.23.d(iv); II.A.23.d(v); II.A.23.d(vi); II.A.23.d(vii); II.A.23.d(ix); II.A.23.f;

(xii) II.A.24, Major Source Baseline Date;

(xiii) II.A.25, Major Stationary Source; II.A.25.a; II.A.25.c; II.A.25.e; II.A.25.f;

(xiv) II.A.26, Minor Source Baseline Date;

(xv) II.A.27, Net Emissions Increase; II.A.27.a; (the language that appears in plain or underlined text and the addition of the italicized phrase “With respect to any regulated NSR pollutant emitted by any major stationary source”); II.A.27.a.(i) (only the language that appears in plain or underlined text and not the language that appears as italicized text); II.A.27.a.(ii) (only the language that appears in plain or underlined text and not the language that appears as italicized text); II.A.27.b (only the language that appears in plain or underlined text and not the language that appears as italicized text); II.A.27.c; II.A.27.c.(i); II.A.27.c(ii); II.A.27.c(iii); II.A.27.d; II.A.27.e; II.A.27.f; II.A.27.g; II.A.27.g.(i); II.A.27.g.(ii); II.A.27.g.(iii) (only the language that appears in plain or underlined text and not the language that appears as italicized text); II.A.27.g.(iv); II.A.27.h; II.A.27.j; II.A.27.k, Creditable Decreases for Fuel Switching;

(xvi) II.A.40, Regulated NSR Pollutant; II.A.40.a; II.A.40.b; II.A.40.d; II.A.40.e;

(xvii) II.A.43, Secondary Emissions (only the language that appears in plain or underlined text and not the language that appears as italicized text);

(xviii) II.A.44, Significant; II.A.44.b; II.A.44.c;

(xix) II.A.45, Significant Emissions Increase;

(3) Section III, Permit Review Procedures;

(4) Section IV, Public Comment Requirements;

(5) Section V, Requirements Applicable to Nonattainment Areas, Sections V.A, Major Stationary Sources; V.A.1; V.A.2; V.A.3; V.A.3.d; V.A.4; V.A.5; V.A.6; V.A.7, Applicability of Certain Nonattainment Area Requirements; V.A.7.a; V.A.7.b; V.A.8, Exemptions from certain nonattainment area requirements;

(6) Section VI, Requirements applicable to attainment and unclassifiable areas and pollutants implemented under section 110 of the Federal Act (Prevention of Significant Deterioration Program), Sections VI.A, Major Stationary Sources and Major Modifications; VI.A.1, Control Technology Review; VI.A.1.a; VI.A.1.b; VI.A.1.c (only the language that appears in plain or underlined text and not the language that appears as italicized text); VI.A.2, Source Impact Analysis; VI.A.3, Pre-construction Monitoring and Analysis; VI.A.4, Post-Construction Monitoring; VI.A.5, Operation of Monitoring Stations; VI.A.6, Additional Impact Analysis (only the language that appears in plain or underlined text and not the language that appears as italicized text); VI.B, Applicability of Certain PSD Requirements; VI.B.1 through VI.B.4; VI.B.7; VI.C, Notice to the U.S. EPA; VI.D, Major Stationary Sources in attainment areas affecting nonattainment areas;

(7) Section VII, Negligibly Reactive Volatile Organic Compounds (NRVOCs);

(8) Section VIII, Area Classifications, Sections VIII.A; VIII.C; VIII.D;

(9) Section IX, Redesignation;

(10) Section X, Air Quality Limitations, Sections X.A, Ambient Air Increments; X.A.1, X.A.2; X.A.3; X.A.4, Periodic Review;

(11) Section XI, Exclusions From Increment Consumption;

(12) Section XII, Innovative Control Technology;

(13) Section XIII, Federal Class I Areas; adopted April 16, 2004 and effective June 30, 2004.

(B) Regulation 3, Stationary Source Permitting and Air Pollutant Emission Notice Requirements, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration, Section II, Definitions; Sections II.A; II.A.22.a; II.A.24.d; II.A.38.c; II.A.42.a; adopted August 17, 2006 and effective October 30, 2006.

3. Section 52.352 is revised to read as follows:

§ 52.352 Interstate transport.

(a) Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport regarding the 1997 8-Hour Ozone Standard for the “significant contribution,” the “interference with maintenance” requirements, and the addition of “interference with visibility protection” requirements regarding the 1997 8-Hour Ozone and PM_{2.5} Standards, submitted by the Governor’s designee on June 18, 2009 and March 31, 2010.

(b) Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP

regarding the 1997 8-Hour Ozone and 1997 PM_{2.5} Standards for the “interference with prevention of significant deterioration” requirement, and the addition of the “significant contribution” and “interference with maintenance” requirements regarding the 1997 PM_{2.5} Standards, submitted by the Governor’s designee on March 31, 2010.

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