



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2024-0207; FRL-12341-02-R8]

Air Plan Approval; Revisions to Colorado Common Provisions Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Common Provisions Regulation of the Colorado State Implementation Plan (SIP). These revisions were submitted by the State of Colorado in response to the EPA's June 12, 2015, Findings of Substantial Inadequacy and "SIP calls" for certain provisions in the SIP related to affirmative defenses applicable to excess emissions during startup, shutdown, and malfunction (SSM) events. The EPA is approving these SIP revisions because the Agency has determined that they are in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or the Act).

DATES: This rule is 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 ID No. EPA-R08-OAR-2024-0207. All documents in the docket are listed on the <https://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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-AQ, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-7104, email address: clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The background for this action is discussed in detail in our October 30, 2024 proposal (89 FR 86305). In that document we proposed to approve revisions to the Common Provisions Regulation portion of Colorado’s SIP. We did not receive comments on this proposal.

II. Final Action

The EPA is approving the portion of Colorado’s June 26, 2023, SIP submission revising the Colorado SIP by removing Common Provisions Regulation sections II.E. and II.J. from the SIP by making them State-only. We are approving the SIP revisions because we have determined that they are consistent with the requirements for SIP provisions under the CAA. The EPA is further determining that finalizing such SIP revisions would correct the deficiencies identified in the EPA’s June 12, 2015 Findings of Substantial Inadequacy and SIP Calls.¹

III. Incorporation by Reference

In this action, we are including in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5 the EPA is incorporating by reference the revisions that would designate them as State-only, and thus remove from “5 CCR 1001-02, Common Provisions Regulation” of the Colorado SIP, sections II.E., “Affirmative Defense Provision for Excess Emissions During Malfunctions,” and II.J., “Affirmative Defense Provision for Excess Emissions During Startup and Shutdown.” The EPA has made, and will

¹ “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” (80 FR 33839, June 12, 2015).

continue to make, these documents generally available electronically through

<https://www.regulations.gov> and in hard copy at the EPA Region 8 office.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- 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 CAA; and

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Colorado did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this final action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

The Congressional Review Act (CRA), 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. The 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 **[INSERT DATE 60 DAYS AFTER 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 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, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 17, 2024.

KC Becker,
Regional Administrator,
Region 8.

For the reasons stated in the preamble, the Environmental Protection Agency is amending 40

CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart G—Colorado

2. In § 52.320, the table in paragraph (c) is amended by revising the entry “II. General” to read as follows:

§ 52.320 Identification of plan.

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(c) * * *

Title	State effective date	EPA Effective date	Final rule citation/date	Comments
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5 CCR 1001-02, Common Provisions Regulation				
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II. General	2/14/2023	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	Previous SIP approval 1/25/2016 except for II.I. and II.J.5. Substantive changes removing II.E. and II.J. approved [insert date of publication in the Federal Register].
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