6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0588; FRL- 9614-8]

Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Colorado: Smoke, Opacity and Sulfur Dioxide Rule Revisions; Regulation 1

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions to Colorado's Regulation 1. The partial approval of the State's revisions allows for the use of obscurants during military exercises at the Fort Carson Military Base and Pinón Canyon Maneuver Site in Colorado when precautionary steps are taken during the exercise to maintain air quality. EPA approves the State's revised determination of averaged over time emission rates and the expansion of recordkeeping requirements. EPA, however, is disapproving the revised provision governing fuel burning equipment. These revisions were adopted by the State of Colorado on July 21, 2005 and submitted to EPA on August 8, 2006. The proposed partial approval and partial disapproval appeared in the Federal Register on August 10, 2011 (76 FR 49391). EPA has determined that the approved revisions in Colorado's submittal are consistent with the Clean Air Act (CAA). This action is being taken under section 110 of the Clean Air Act.

DATES: 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-2011-0588. All documents in the docket 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: Mark Komp, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6022, komp.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

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Definitions

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

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

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

The initials SIP mean or refer to State Implementation Plan.

The words State or Colorado mean the State of Colorado, unless the context indicates otherwise.

The initials NSR mean or refer to New Source Review, the initials PSD mean or refer to Prevention of Significant Deterioration and the initials NAAQS mean or refer to National Ambient Air Quality Standards.

The initials CO mean Carbon Monoxide, NO_2 mean Nitrogen Dioxide and SO_2 mean Sulfur Dioxide.

The initials BACT mean Best Available Control Technology.

The word Base means United States Army Fort Carson Military Base and the word PCMS means Pinón Canyon Maneuver Site.

The initials CEM mean Continuous Emission Monitoring.

I. Summary of SIP Revisions

Colorado's Regulation 1 governs opacity, particulates, sulfur dioxide (SO_2), and carbon monoxide (CO) emissions from sources. Colorado adopted revisions to Regulation 1 on July 21, 2005 and submitted them to EPA on August 8, 2006. The State revised regulations regarding the use of smoke during military operations, equipment requirements and work practices (abatement and control measures) intended to control the emissions of particulates, smokes and SO_2 from

new and existing stationary sources.

The revision also provides a new numbering scheme for each section of the regulation. Previously, subsections were designated only by the letter or number (for example, A or 1) assigned to that subsection. In the revision, every subsection is designated by full reference to it (for example, I.A or I.A.1).

Section I.A. provides that Regulation 1 provisions are applicable statewide. An exception is made if a provision within Regulation 1 is made specifically applicable to attainment, attainment/maintenance or nonattainment areas. Consistent with its use of the term elsewhere, the State added the attainment/maintenance nomenclature as a revision to Section I.A.

The State adopted EPA test methods number 1 through 9 (40 CFR 60, Appendix A-4) as it is applied to Standards of Performance for Steel Plants: Electric Arc Furnaces (40 CFR 60.275).

In the "Background" section of our proposed rule for these Regulation 1 revisions (76 FR 49391), we said that the State had submitted a revision to Section II.A.1 requiring sources to use EPA Test Method 9 to determine opacity. Originally, the State had added language to the section stating that the use of the test method shall not preclude the use of other credible evidence. The use of other credible evidence was suggested by EPA during the State's drafting of the revisions. The intent of the suggestion was to clarify that the use of the test method was not the only evidence that could be used to determine opacity. The State decided that the addition of the credible evidence wording was unnecessary because Regulation 1 is subject to the credible evidence provisions found in the State's Common Provisions. Therefore, the State removed the credible evidence reference from their revisions to Regulation 1, and section II.A.1

was unchanged in this revision. The "Proposed Action" section of our notice did not propose action on this section, correctly reflecting that no substantive change to this section had been made.

Section II.A.3 was revised to clarify that pilot plants and experimental operations shall not emit particulate matter in excess of 30 percent opacity for more than six minutes during a sixty minute time period. Prior to the revision the sixty minute time period had not been defined.

The State revised Regulation 1 to address the United States Army Fort Carson Military Base's (Base's) need to use military obscurants during training while, at the same time, maintaining the air quality in areas accessible to the public near the military base. Section II.A of Regulation 1 prior to the revision set general standards for all sources prohibiting emissions into the atmosphere of any air pollutant which is in excess of 20% opacity. However in 1998 the State revised Regulation 1 in recognition that obscurant generation training by the United States Army purposefully intends to be at or near 100 percent opacity. Section II.D set specific limitations for the use of obscurants at the Base and the Pinón Canyon Maneuver Site (PCMS) at 100 percent opacity subject to specified limitations and conditions. These included using a buffer zone around the military's training operation and limitation of the quantity of obscurant being generated.

The August 8, 2006 submittal revised Section II. of Regulation 1 by removing the daily limitation to the use of obscurants, and replaced a three-kilometer buffer zone within the military training area where obscurants could not be generated with a prohibition on transport of visible emissions from obscurants outside the boundaries of the facilities in order to protect the air quality in public areas outside the military boundary.

Section III.A.1.d, prior to its revision by the State, stated that if two or more fuel burning units connect to any opening, the maximum allowable emission rate shall be calculated on a process rate of pound per million heat input (BTU) basis. The State revised this so that the maximum allowable emission rate shall be calculated on a design rate of pounds per hour.

A revision to Section III.B.2.a of Regulation 1 clarified the areas where an incinerator emission standard applies. Previously, the emission rate limitation of 0.10 grain of particulate matter per standard cubic foot applied only to incinerators located in nonattainment areas. The revision, consistent with changes elsewhere, included attainment/maintenance areas as well.

The August 8, 2006 submittal changed Section III.C.1.a. regarding manufacturing processes emission rates, to clarify that the applicability of the section is to process equipment with a design rate of 30 tons per hour or less.

Under the revision averaging times for existing sources of SO_2 (unless specified in other sections of Regulation 1) shall be a three hour rolling average (Section VI.A.1). Prior to the August 8, 2006 submittal only sources utilizing a CEM were subject to the 3 hour rolling average. Requirements regarding frequency of fuel sampling were eliminated from this section. Recordkeeping and reporting requirements were modified in Section VI.A.5 to allow the State to require a longer period than the two years for keeping records on site.

We noted in the "Background" section of our proposed rule for these Regulation 1 revisions (76 FR 49391), that the State had submitted a revision to Section VI.B.4.i that addressed emission limitations for new cement manufacturing sources. This revision was removed by the State prior to the submittal of the revisions to EPA on August 8, 2006. The State decided that new cement manufacturing plants will be included in the State's NSR permit

program that will include more stringent SO_2 emissions than are established in Regulation 1. Therefore, the State removed as unnecessary and redundant the reference to new cement manufacturing plants in Section VI.B.4.i. The "Proposed Action" section of the notice did not propose action on this section, correctly reflecting that no substantive change had been made.

In Section VIII.A., Applicability, the reference to the US Department of Energy, Rocky Flats Environmental Technology Site and Gates Rubber Company as sources using oil as a backup fuel is deleted since the sources no longer operate in the Denver, Colorado metropolitan area.

II. Response to Comments

EPA did not receive comments regarding our proposed rule for Colorado's Regulation 1 revisions.

III. Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirement of the Act. The Colorado SIP revisions being approved that are the subject of this action do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. In regard to the August 8, 2006 submittal, EPA is approving several revisions to the State's Regulation Number 1. These portions do not relax the stringency of the Colorado SIP. In particular, the State reinstated previous SO_2 limits, where we had disapproved subsequent relaxations that the State submitted. Therefore, this action satisfies the requirements of section 110(l).

IV. Final Action

We are not acting on purported substantive revisions made to Section II.C. regarding the State's Open Burning regulation. Upon review of the revisions, the language was unchanged from a previous revision the State had made to its Open Burning regulations under the Smoke and Opacity section of Regulation 1. EPA approved this revision in an earlier action (76 FR 4540, January 26, 2011). EPA therefore considers that no substantive revision was submitted for Section II.C. As discussed above, no substantive changes were made to sections II.A.1 and VI.B.4.i.

What EPA is Approving

We are approving the new numbering scheme for Regulation 1. This approval does not constitute approval of any renumbered provisions that were not substantively modified, including sections II.A.1, II.C, and VII.B.4.i. We are approving the State's incorporation by reference into the SIP of EPA test method 9.

We are also approving the use of obscurants by the United States Army for military exercises at Fort Carson and PCMS under the prescribed conditions stated in Section II.D. The use of design rates for determining allowable emissions rates for manufacturing processes as defined in Section III.C.1.a of Regulation 1 is also approved.

The revision to the default averaging time (3 hour rolling average) for existing sources of SO_2 (Section VI.A.1) is approved. The modification to recordkeeping and reporting requirements in Section VI.A.5 is also approved. The reinstatement of Section VI.B.5,

requirements for new sources of SO_2 emissions not regulated elsewhere in Regulation 1, is approved.

EPA is approving the deletion of the Rocky Flats Environmental Technology Site and the Gates Rubber Company in Section VIII.A. Minor grammatical revisions made throughout the revisions are also being approved. The State's use of the term "attainment /maintenance" area in Sections I.A., III.B.2.a, IV.D.2, and IX is approved.

What EPA is Disapproving

EPA is disapproving the revision to Section III.A.1.d regarding the maximum allowable emission rate for multiple fuel units. We did not receive information from the State showing that changing the method for calculating emissions would not result in an increase in emissions. The State considered the issue and realized that the likelihood of two units venting to one stack where a pound per hour emission rate was needed would be rare. Therefore, the State did not provide the information and EPA is disapproving the revision to Section III.A.1.d

V. Statutory and Executive Orders Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C.

601 *et seq*.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP

submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.).

The Congressional Review Act, 5 U.S.C. section 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 rule 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. section 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 rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 20, 2011.

James B. Martin

Regional Administrator

Region 8

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)(121) to read as follows:

§52.320 Identification of plan.

* * * * *

(c) * * *

(121) On August 8, 2006, the State of Colorado submitted revisions to Colorado's 5 CCR 1001-3, Regulation 1, that allows for the use of obscurants during military exercises at the Fort Carson Military Base and Pinón Canyon Maneuver Site in Colorado while precautionary steps are taken during the exercise to maintain air quality. The State modified the equipment requirements and work practices (abatement and control measures) in Regulation 1 intended to control the emissions of particulates, smokes and SO_2 from new and existing stationary sources. Consistent with its use of the term elsewhere, the State added the attainment/maintenance nomenclature. The revision also provides a new numbering scheme for each section of the regulation.
The State adopted EPA test method 9 (part 60 of this title, Appendix A-4) as it is applied to Standards of Performance for Steel Plants (§60.275a of this title). The State revised manufacturing process emission rates, to clarify that the applicability of the section is to process equipment with a design rate of 30 tons per hour or less. The averaging time for emission standards of all existing sources of SO_2 shall be a three hour rolling average. New sources of

SO_2 not specifically regulated within Regulation 1 are limited to two tons per day and are subject to BACT.

(i) Incorporation by reference.

(A) 5 CCR 1001-3, Regulation 1, Emission Control for Particulate Matter, Smoke, Carbon Monoxide, and Sulfur Oxides, Section I., Applicability: Referenced Federal Regulations; Section II., Smoke and Opacity; Section III., Particulate Matter (except Subsection III.A.1.d.); Section IV., Continuous Emission Monitoring Requirements for New or Existing Sources; Section V., Emission Standards for Existing Iron and Steel Plant Operations; Section VI., Sulfur Dioxide Emission Regulations; Section VII., Emission Regulations for Certain Electric Generating Stations Owned and Operated by the Public Service Company of Colorado; Section VIII., Restrictions On The Use of Oil as a Backup Fuel; effective October 2, 2005.

[FR Doc. 2012-713 Filed 01/17/2012 at 8:45 am; Publication Date: 01/18/2012]