



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0963, FRL-9640-3]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Procedural Rules; Conflicts of Interest

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving Section 1.11 of Colorado's procedural rules as adopted by the Air Quality Control Commission (Commission) on January 16, 1998 and submitted to EPA as a State Implementation Plan (SIP) revision on November 5, 1999. Section 1.11.0 provides for specific requirements regarding the composition of the Commission and disclosure by its members of potential conflicts of interest. We are also approving the remaining portion of Colorado's January 7, 2008 submittal to meet the Infrastructure requirements of section 110(a)(2) of the Clean Air Act (CAA) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS), specifically the portion intended to address the requirements of section 110(a)(2)(E)(ii) of the CAA. The proposed approval appeared in the **Federal Register** on January 4, 2012 (77 FR 235). EPA has determined that the approved revisions in Colorado's submittals are consistent with the CAA. This action is being taken under section 110 of the Clean Air Act.

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-2011-0963. 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:

Table of Contents

- I. Summary of SIP Revisions
- II. Response to Comments
- III. Consideration of Section 110(l) of the CAA
- IV. Final Action
- V. Statutory and Executive Order Reviews

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 State or Colorado mean the State of Colorado, unless the context indicates otherwise.
- (v) The word Commission means the Colorado Air Quality Control Commission.

I. Summary of SIP Revisions

Colorado adopted revisions to its procedural rules on January 16, 1998 and submitted part of the revised procedural rules to EPA on November 5, 1999.¹ The revision consisted of wording changes to Section 1.11 of its procedural rules. Colorado's procedural rules govern all procedures and hearings before the Commission and certain procedures and hearings before the Air Pollution Control Division within the Colorado Department of Public Health and Environment. The revisions to the Commission's procedural rules, which were last revised in 1984, were intended to bring the Commission current with all applicable procedural requirements for their official actions. Section 1.11 addresses the requirements of section 128 of the CAA.

¹ Please refer to EPA's proposed action on January 4, 2012 (77FR235) for more information concerning this SIP revision.

Separately, on January 7, 2008, Colorado provided a submittal to meet the requirements of section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS. Under section 110(a)(1) of the CAA, within three years of EPA's promulgation of a new or revised standard, states are required to make a submittal, known as an "infrastructure SIP," to meet the requirements of sections 110(a)(1) and (a)(2). Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements, such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. EPA approved most of the January 7, 2008 SIP revision on May 18, 2011. However, the remaining portion of section 110(a)(2)(E)(ii) is being approved in this action.

II . Response to Comments

EPA did not receive comments regarding our proposed rule for Colorado's procedural rules.

III. Consideration of 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 NAAQS or any other applicable requirement of the Act. The Colorado SIP revisions that are approved in this action do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. The revisions do not make substantive changes that relax the stringency of the Colorado SIP; instead, the submittal of Section 1.11 of Colorado's procedural rule meets the requirement of section 128 of the CAA. Therefore, the

revisions that are approved in this action satisfy section 110(l) requirements.

IV. Final Action

We are approving Section 1.11 of Colorado's procedural rule as adopted by the Commission on January 16, 1998 and submitted to EPA on November 5, 1999, to meet the requirements of section 128 of the CAA. We are also approving of a portion of Colorado's January 7, 2008 submittal to meet the "infrastructure" requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS, specifically the portion intended to address the requirements of section 110(a)(2)(E)(ii) of the CAA.

V. Statutory and Executive Order Reviews

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: February 14, 2012.

James B. Martin
Regional Administrator
Region 8

40 CFR part 52 is amended to read 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. Amend § 52.320 by adding paragraph (c)(123) to read as follows:

§52. 320 Identification of plan.

* * * * *

(c) * * *

(123) Colorado adopted revisions to its procedural rules on January 16, 1998 and submitted part of the revised procedural rules to EPA on November 5, 1999. Colorado's procedural rules govern all procedures and hearings before the Air Quality Control Commission (Commission) and certain procedures and hearings before the Air Pollution Control Division within the Colorado Department of Public Health and Environment. The revision to the Commission's procedural rules was intended to bring the Commission current with all applicable procedural requirements for their official actions. The submitted portion of the revision consisted of changes to Section 1.11.0 of the procedural rules. The section addresses requirements under section 128 of the CAA regarding the composition of the Commission and disclosure by its members of potential conflicts of interest

(i) Incorporation by reference.

(A) Department of Public Health and Environment, Air Quality Control Commission, Procedural Rules, 5 CCR 1001-1, Section 1.11.0, State Implementation Plan, adopted on January

16, 1998 and effective on March 30, 1998.

(ii) [Reserved]

3. Revise § 52.353 to read as follows:

§52.353 **Section 110(a)(2) infrastructure requirements.**

On January 7, 2008, James B. Martin, Executive Director of the Colorado Department of Public Health and Environment for the state of Colorado, submitted a certification letter which provides the state of Colorado's SIP provisions for meeting the requirements of CAA Section 110(a)(1) and (2) relevant to the 1997 8-hour ozone NAAQS. The State's 1997 Ozone Infrastructure SIP is approved with respect to the requirements of the following elements of section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).