



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2011-0036; FRL-9284-4

Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revision to Definitions; Common Provisions Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the State of Colorado on June 20, 2003. The intended effect of this final rule is to approve and make federally enforceable those portions of the revisions to Colorado's Common Provisions that are consistent with the Clean Air Act (CAA). Primarily, the revisions involved changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete definitions. In addition, a number of definitions were revised to reflect developments in federal law or were deleted to eliminate duplicative provisions that appear in other Colorado regulations. EPA is approving portions of the revision that delete duplicative or obsolete definitions, or that clarify existing definitions in a manner consistent with the CAA. In addition, EPA is disapproving those portions of the rule revisions that EPA determined are inconsistent with the CAA. This action is being taken under section 110 of the CAA.

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-2011-0036. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in 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, U. S. Environmental Protection Agency, Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone number (303) 312-6022, fax number (303) 312-6064, komp.mark@epa.gov.

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 initials AQCC mean or refer to Air Quality Control Commission.
- (vi) The initials NAAQS mean or refer to National Ambient Air Quality Standards.
- (vii) The initials BACT mean or refer to Best Available Control Technology, and the initials LAER means or refers to Lowest Achievable Emission Rate.
- (viii) The initials ASTM means or refers to the American Society for Testing and Materials.

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I. Background Information

On June 20, 2003, the State of Colorado submitted revisions to its SIP that changed or deleted numerous definitions in its Common Provisions. Colorado's Common Provisions provide definitions, statement of intent and general provisions that are applicable to all emission control regulations adopted by the State. Primarily, this revision involved changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete definitions. In addition, a number of definitions were revised to reflect developments in federal law or deleted to eliminate duplicative provisions that appear in other Colorado regulations.

Definitions deleted include: actual emissions, allowable emissions, best available control technology (BACT), lowest achievable emission rate (LAER) and the modification of a source. These definitions were deleted from the Common Provisions because the State placed these definitions in their Regulation 3.

Revisions to the Common Provisions also include grammatical, formatting and stylistic changes designed to make the regulation more readable. The State made these revisions to achieve consistency in the language used in the State's air quality regulations. These revisions do not change the applicability of any of the air quality regulation requirements. The State also added a number of abbreviations to the existing list.

The State clarified when fuel burning equipment would be considered part of a manufacturing process. The revisions to the Common Provisions change the definition of fuel burning and added a definition for manufacturing process equipment. The result was to clarify that fuel burning emissions are counted as manufacturing process emissions when they are vented through a common stack with other emissions from the manufacturing process. When fuel burning emissions are vented separately, the emissions are subject to regulations unique to fuel burning equipment.

The definition of construction was changed to clarify the distinction between the State's definition and the definition in federal programs. The clarification acknowledges that federal programs may utilize different definitions of construction and, in cases where enforceability of federal programs are involved, the federal program definitions apply. The State also added or modified the definitions of the following terms: continuous monitoring system, day, emergency power generator, enforceable, federally enforceable, and volatile organic compounds.

The State determined that many of its definitions in Section I of the Common Provisions were either obsolete or found in other State air quality regulations. In those cases, the State eliminated the definitions from the Common Provisions. The State revised the provision for Affirmative Defense for excess emissions during start up, shutdown and malfunctions of equipment and moved the provision from Section II.E to Section II.J. The State added language to Section II.I regarding credible evidence in submitting compliance certifications. Finally, the State deleted Sections III and IV of the Common Provisions because the State determined the requirements in these Sections are duplicated in other State regulations. Section III refers to smoking gasoline powered motor vehicles. Section IV addresses conflict of interest by AQCC members.

II. Response to Comments

EPA did not receive comments regarding our proposed rule for Colorado's Common Provisions 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 NAAQS or any other applicable requirement of the Act. The Colorado SIP revisions being approved that are the subject of this document do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. In regard to the June 20, 2003 submittal, EPA proposes to approve several portions of the revisions to the State's Common Provisions. These portions do not relax the stringency of the Colorado SIP. Therefore, the portions of the revisions proposed for approval satisfy section 110(l).

IV. Final Action

We are approving and disapproving revisions to the Common Provisions as submitted on June 20, 2003. EPA is approving specific definitions that were added or modified with the June 20, 2003 Common Provisions submittal. These include the definitions for continuous monitoring system, emergency power generator, enforceable, federally enforceable, fuel burning, manufacturing process or process equipment, and volatile organic compounds.

Changes that correct numerous grammatical, stylistic and formatting errors, duplicative and obsolete provisions, and the addition of several abbreviations within the Common Provisions are also approved by EPA. This includes the deletion of Section III of the Common Provisions regarding smoking gasoline powered motor vehicles. EPA is also approving the deletion of several definitions— actual emissions, allowable emissions, BACT, LAER and modification—that have been moved to Regulation No. 3.

For reasons discussed in the notice of our proposed action, 76 FR 4268, EPA is disapproving the modified definitions of “construction” and “day.” The additional language added to Section II.I regarding credible evidence in submitting compliance certifications is disapproved. Finally, EPA is disapproving the deletion of Section IV of the Common Provisions.

EPA will not act on Sections II.E and II.J, defining the provision of Affirmative Defense for excess emissions during start up, shutdown and malfunction of equipment. The State in subsequent revisions sent to EPA modified the Affirmative Defense provision. EPA acted on these subsequent revisions, which supersede the revisions acted on here, in 2008 (40 CFR 52.320(c)(113)).

V. Statutory and Executive Order Reviews

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, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 14, 2011

Carol Rushin
Acting Regional Administrator
Region 8

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)(59)(ii) and adding paragraph (c)(118) to read as follows:

§ 52.320 Identification of plan.

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(c) * * *

(59) * * *

(ii) Common Provisions Regulation, 5 CCR 1001-2, Section III., Smoking Gasoline Powered Motor Vehicle Control Region, is deleted without replacement, effective September 30, 2002, as described in (c)(118) below.

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(118) On June 20, 2003, the State of Colorado submitted revisions to Colorado's Common Provisions Regulation, 5 CCR 1001-2, that revised the definitions of continuous monitoring system, emergency power generator, enforceable, federally enforceable, manufacturing process or process equipment, and volatile organic compounds. Deleted definitions included but were not limited to actual emissions, Best Available Control Technology (BACT), Lowest Achievable Emission Rate (LAER), and what conditions determine the modification of a source. These definitions were deleted in the Common Provisions because they appear in Colorado's

Regulation 3. The State clarified that fuel burning equipment emissions are considered a part of the manufacturing process emissions when the emissions are vented through a common stack. However, fuel burning equipment emissions vented from a separate stack are subject to regulations unique to fuel burning equipment. In addition, the State deleted and reserved Section III of the Common Provisions regarding smoking gasoline powered motor vehicles. The provisions regarding smoking gasoline powered motor vehicles were considered by the State to be obsolete. The revisions to the Common Provisions also included minor changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete or duplicative definitions.

(i) Incorporation by reference.

(A) 5 CCR 1001-2, COMMON PROVISIONS REGULATION, Section 1., Definitions, Statement of Intent, and General Provisions Applicable to all Emission Control Regulations Adopted by the Colorado Air Quality Control Commission, except I.G, the definitions for “Construction” and “Day”; Section II, General, except II.E, II.I, and II.J; effective on September 30, 2002.