



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2019-0054; FRL-9992-00-Region 8]

#### Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 4, New Wood Stoves and the Use of Certain Woodburning Appliances During High Pollution Days

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions to Colorado Regulation Number 4 (Reg. No. 4), “New Wood Stoves and the Use of Certain Woodburning Appliances During High Pollution Days,” submitted by the State on May 2, 2016, and May 14, 2018. The revisions update definitions, emission standards, certification and labeling requirements, and citation references to maintain consistency with the EPA’s 2015 Standards of Performance for New Residential Wood Heaters.

**DATES:** Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2019-0054, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://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](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The 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:** Abby Fulton, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6563, [fulton.abby@epa.gov](mailto:fulton.abby@epa.gov).

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

## **I. Background**

Regulation Number 4 sets particulate matter emission standards for wood-burning stoves, pellet stoves and masonry heaters and prohibits the sale or installation of devices that do not meet the standards. On April 10, 1986 (51 FR 12321), the EPA approved Reg. No. 4 as part of the Colorado SIP and has approved various revisions to parts of Reg. No. 4 over the years. In 1987, the EPA approved revisions that established a new fee schedule for certification of new woodstoves sold after January 1, 1987 (52 FR 23446, June 22, 1987).

On February 26, 1988 (23 FR 5860), the EPA adopted a national woodstove certification program, “Standards of Performance for New Stationary Sources; New Residential Wood Heaters.” To provide consistency between the state and federal regulations, Colorado submitted a SIP revision that revised section I. “Definitions” and section II. “Requirements for Sale of Wood Stoves” of Reg. No. 4 to exempt wood-fired appliances, boilers, furnaces and cookstoves from the certification requirements of Reg. No. 4. The EPA approved the SIP revisions on March 8, 1989 (54 FR 9780).

In 1991 (56 FR 11672, March 20, 1991), the EPA approved revisions (1) Prohibiting any person living in certain specified areas from operating a wood burning stove or fireplace during a high pollution day; (2) amending two definitions and adding five new definitions; (3) removing three sections (Laboratory Accreditation Procedures, Laboratory Inspection, and Accreditation Criteria); and (4) adding new language and changing the numbering order of Reg. No. 4 sections II., III., IV., V., VI., VII., VIII. and IX.

Later, as part of the Denver Moderate nonattainment area PM<sub>10</sub> SIP control measures, the EPA approved Reg. No. 4 revisions, adding new section VIII. “Implementation of Local Control Strategies” and recodifying reference sections (59 FR 37698, July 25, 1994). The EPA approved Reg. No. 4 revisions to Section VIII. as adopted by the Air Quality Control Commission

(AQCC) on June 24, 1993 (62 FR 18721, April 17, 1997). Section VIII. was revised to make locally adopted regulations for certain local governments in the Denver PM<sub>10</sub> nonattainment area State enforceable.

## **II. Analysis of the State's Submission**

On March 16, 2015, the EPA published revisions to 40 Code of Federal Regulations (CFR) part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters (NSPS AAA). In 2015, The AQCC revised Reg. No. 4 to update definitions, emission standards, certification and labeling requirements, and citation references, for consistency with and as referenced in the revised NSPS AAA. Colorado submitted revisions to its SIP to the EPA on May 2, 2016. Colorado later submitted revisions to its SIP to the EPA on May 14, 2018, to reestablish a definition for new wood stove<sup>1</sup> and clarify that the requirements for wood stove certification, testing, and labeling requirements are limited to new wood stoves state-wide and used wood stoves located in the defined Program Area.<sup>2</sup>

Colorado made substantive revisions to certain limited parts of Reg. No. 4, particularly Sections I., II., III., V., VI., VII., VIII. and X., and made non-substantive revisions to numerous parts of the regulation. For ease of review, Colorado submitted the full text of Reg. No. 4 as a SIP revision (with the exception of provisions designated "State Only"). We are only seeking comment on Colorado's proposed substantive changes to the SIP-approved version of Reg. No. 4, which are described below. We are not seeking comment on incorporation into the SIP of the revised portions of the regulation that were previously approved into the SIP and have not been substantively modified by the State as part of this submission.

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<sup>1</sup> Colorado submitted revisions to its SIP to EPA on August 1, 2007. The 2007 revisions to Reg. No. 4 repealed a definition for "new wood stove." The SIP was later withdrawn in full prior to EPA action because "state only" provisions for masonry heaters were included in the SIP revisions.

<sup>2</sup> The Program Area is defined in the Colorado Revised Statutes, Section 42-4-304(20)(a).

As noted above, Colorado designated various parts of Reg. No. 4 “State Only.” The EPA concludes that provisions designated “State Only” have not been submitted for EPA approval, but for informational purposes. Hence, we are not proposing to act on the portions of Reg. No. 4 designated “State Only” and this proposed rule does not discuss them further except as relevant to discussion of the portions of the regulation that Colorado intended to be federally enforceable.

The provisions we propose to approve meet the requirements of the CAA and our regulations. The specific bases for our proposed actions and our analyses and findings are discussed in this proposed rulemaking.

#### *A. Procedural Requirements*

The CAA requires that states meet certain procedural requirements before submitting SIP revisions to the EPA. Specifically, section 110(a)(2) of the CAA, 42 U.S.C. 7410(a)(2), requires that states adopt SIP revisions after reasonable notice and public hearing. For the May 2, 2016 submission, the Colorado AQCC provided notice in the Colorado Register on August 21, 2015, and held a public hearing on the SIP revisions on November 19, 2015. The Colorado AQCC adopted the SIP revisions on November 19, 2015. The SIP revisions became State-effective on January 14, 2016. For the May 14, 2018 submittal, the Colorado AQCC provided notice in the Colorado Register on December 16, 2016, and held a public hearing on March 16, 2017. The Colorado AQCC adopted the SIP revisions on March 16, 2017. The SIP revisions became State-effective on April 30, 2017. Colorado met the CAA’s procedural requirements for reasonable notice and public hearing.

### **III. The EPA’s Evaluation**

- a. Analysis by Section of Reg. No. 4 Changes in May 2, 2016 Submittal

The EPA proposes to approve the following changes made to Sections I., II., III., V., VI., VII. and X. with Colorado's May 2, 2016 submission.<sup>3</sup>

(i) Section I.A.

Section I.A. contains definitions used in Reg. No. 4. The changes made to Sections I.A.3, I.A.5, I.A.7, I.A.10 and I.A.18-20 are clerical<sup>4</sup> in nature and do not affect the substance of the requirements.

(a) Sections I.A.1 and I.A.21

The changes made to Sections I.A.1 and I.A.21 update the reference dates to the CFR.

(b) Sections I.A.4 and I.A.9

The changes made to Sections I.A.4 and 9 restrict boilers and furnaces affected by Reg. No. 4 to only those using wood. Reg. No. 4 applies only to wood-burning devices, so the definition changes provide clarity regarding affected sources consistent with particulate emission controls in Reg. No. 4.

(c) Sections I.A.6

Colorado's May 2, 2016 submission repeals the definitions of "certified wood stove" contained in Section I.A.6 for clarity. Reg. No. 4 still contains definitions for "new wood stove" in Section I.A.17 and "wood-burning stove" in Section I.A.23 consistent with NSPS AAA (2015).

(d) Sections I.A.8, I.A.11 and I.A.16

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<sup>3</sup> All other sections of Reg. No. 4 addressed in the May 2, 2016 submission have been superseded by the State's May 14, 2018 submission. The EPA is not acting on the superseded earlier submissions.

<sup>4</sup> When we describe changes as clerical in this proposed action, we are referring to changes such as section renumbering and references, alphabetizing of definitions, minor grammatical and editorial revisions, and changes in capitalization.

The changes made to Sections I.A.8, I.A.11 and I.A.16 expand definitions for “dealer,” “manufacturer,” and “model” to include fireplaces which were previously omitted.

(e) Section I.A.8.5

Section I.A.8.5 adds a new definition for “exempt device” to provide clarity and consistency with NSPS AAA (2015).

(f) Sections I.A.13-15

The changes made Sections I.A.13-15 were updated for consistency with test methods in Subpart AAA as of 2004.

(g) Section I.A.22

The changes made to Section I.A.22 correct grammatical errors and redefine the definition of wood-burning fireplace in more specific terms to clarify that they are not masonry heaters (defined as “State only” in Section I.A.12).

(h) Section I.A.23

The definition in Section I.A.23 for wood-burning stove was revised to correspond to the revised NSPS AAA definition of wood heater. The revised definition provides consistency with federal definitions in NSPS AAA (2015).<sup>5</sup>

(ii) Section II.

Section II. establishes limitations on the sale and installation of wood-burning stoves including testing, certification and labeling requirements.

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<sup>5</sup> Colorado uses the term “wood-burning stove” throughout Reg. No. 4 as opposed to the federal definition for “wood heaters” in 40 CFR 60.531.

(a) Section II.C.

The change made to Section II.C. adds a reference to the new definition of “exempt devices” in Section I.A.8.5.

(b) Section II.D.

Section II.D. corrects a grammatical error and updates the automobile inspection and readjustment (AIR) program area geography to include Broomfield County.<sup>6</sup>

(iii) Section III.

Section III. establishes approval procedures for pellet stoves including testing, certification and labeling requirements.

(a) Section III.A.

The revision made to Section III.A. changes the applicable date of the requirement due to the addition of new Section III.G.

(b) Section III.G.

Section III.G. revisions retain the current SIP approved emission standard of 4.1 g/hr and revises the pellet stove testing, certification and labeling requirements for consistency with Subpart AAA (2015).

(iv) Section V.

Section V. establishes provisions for enforcement of Reg. No. 4. Changes made to Section V. include correcting grammatical errors and adding fireplaces into the same restrictions as other wood-burning devices.

(v) Section VI.

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<sup>6</sup> The AIR program area is defined in the Colorado Revised Statutes, Section 42-4-304(20)(a).

Section VI. requires each dealer to make available a list of approved wood burning appliances and exempt devices. Changes made to this section are grammatical and the substance of the provision remains unchanged.

(vi) Section VII.

Section VII. regulates the use of wood-burning devices on high pollution days.

(a) Section VII.A.

The changes made to Section VII.A. update the AIR program geography to include Broomfield County and broadens the applicability of the provision to the use of wood-burning appliances on high pollution days.

(b) Sections VII.B. and VII.C.

Revisions in Sections VII.B. and VII.C. make grammatical changes and do not change the substance of the SIP approved provisions.

(c) Section VII.D.

Changes to Section VII.D. include clarifications of the specific types of devices prohibited, and fuel restriction use during a high pollution day.

(d) Section VII.E.

Section VII.E. changes correct grammatical errors and clarify the specific types of devices exempt during a high pollution day. The revisions provide consistency with the requirements in Section II and III, and Section I definitions.

(vii) Section X.

Section X. includes information regarding incorporation by reference material. The changes to this Section are clerical in nature and do not change the substance of the provisions.

Based on our analysis of Section I., II., III., V., VI., VII. and X. changes from Colorado's May 2, 2016 submission, we find that revisions are clerical in nature, do not change the substance of currently approved SIP provisions, or have been updated to clarify provisions and reflect current federal requirements in NSPS AAA. We therefore propose approving the changes in these sections.

b. Analysis by Section of Reg. No. 4 Changes in May 14, 2018 Submittal

The EPA proposes to approve the following changes made to Sections II. and VIII. with Colorado's May 14, 2018 submission.

(i) Section II.

As previously stated, Section II. establishes limitations on the sale and installation of wood-burning stoves including testing, certification, and labeling requirements.

(a) Section II.A.

Changes made to Section II.A. update the NSPS AAA citation reference to require new wood-burning stoves to meet testing, certification, labeling and emission requirements in revised NSPS AAA (2015).

(ii) Section VIII.

Section VIII. establishes requirements for the installation of fireplaces.

Revisions to this section are clerical in nature and do not change the substance of the provisions.

Based on our analysis of Sections II. and VIII. changes from Colorado's May 14, 2018 SIP submission, we find that revisions are clerical in nature, do not change the substance of currently approved SIP provisions, or have been updated to provide clarity and reflect current

federal requirements in Subpart AAA. We therefore propose approving the changes in these sections.

#### **IV. Proposed Action**

We are proposing to approve the SIP submittals from the State of Colorado for Reg. No. 4 submitted on May 14, 2018. We also propose to approve SIP revisions to Reg. No. 4 submitted by the State on May 2, 2016, except for provisions that have been superseded by the later submission, as to which we are not taking any action. We propose these actions in accordance with section 110 and part D of the CAA.

#### **V. Incorporation by Reference**

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Colorado Reg. No. 4 pertaining to regulation of the sale and installation of wood-burning appliances discussed in section II. of this preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

#### **VI. 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 proposes to approve 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 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 CAA; and

- Does not provide the 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, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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).

#### **List of Subjects in 40 CFR Part 52**

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

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

Dated: April 5, 2019.

Debra Thomas,  
Acting Regional Administrator,  
EPA Region 8.