

(Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that 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.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will 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, because it merely proposes to partially approve and partially disapprove state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 28, 2005.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 05–23715 Filed 12–6–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R08–OAR–2005–CO–0003; FRL–8005–6]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve those revisions adopted by Colorado on April 16, 2004 to Regulation No. 3 (Stationary Source Permitting and Air Pollutant Emission Notice Requirements) that incorporate EPA’s December 31, 2002 NSR Reforms. Colorado submitted the request for approval of these rule revisions into the State Implementation Plan (SIP) on July 11, 2005 and supplemented its request on October 25, 2005. At this time, EPA is proposing to approve only the portions of Colorado’s revisions to Regulation Number 3 that relate to the prevention of significant deterioration (PSD) and non-attainment new source review (NSR) construction permit programs of the State of Colorado. Other revisions, renumberings, additions, or deletions to Regulation No. 3 made by Colorado as part of the April 16, 2004 final rulemaking will be acted on by EPA in a separate action. Colorado has a Federally approved New Source Review (NSR) program for new and modified sources impacting attainment and non-attainment areas in the State.

On December 31, 2002, EPA published revisions to the federal Prevention of Significant Deterioration (PSD) and non-attainment NSR regulations. These revisions are commonly referred to as “NSR Reform” regulations and became effective nationally in areas not covered by a SIP on March 3, 2003. These regulatory

revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). On November 7, 2003, EPA published a reconsideration of the NSR Reform regulations that clarified two provisions in the regulations. On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR Reform revisions. Although the Court upheld most of EPA's rules, it vacated both the Clean Unit and the Pollution Control Project provisions and remanded back to EPA the "reasonable possibility" standard for when a source must keep certain project related records.

Colorado is seeking approval, at this time, for its regulations to implement the NSR Reform provisions that have not been vacated or remanded by the June 24, 2005, court decision.

DATES: Comments must be received on or before January 6, 2006.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R08-OAR-2005-CO-0003 by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Agency Web site: <http://docket.epa.gov/rmepub>. Regional RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: daly.carl@epa.gov.

Fax: (303)312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

Mail: You may send written comments to: Richard R. Long, Director, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202.

Hand delivery: Deliver your comments to: Richard R. Long, Director, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, 3rd floor, Denver, Colorado 80202. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:55 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R08-OAR-2005-CO-0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available at <http://docket.epa.gov/rmepub>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub>. Although listed in the index, some information is not publicly available, i.e., 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 in RME or in hard copy at Environmental Protection Agency, Region 8, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202. We recommend that you telephone Carl Daly at (303) 312-6416 before visiting

the Region 8 office. This Facility is open from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202, (303) 312-6416, daly.carl@epa.gov.

SUPPLEMENTARY INFORMATION: 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.

This supplementary information section is arranged as follows:

- I. General Information
 - A. Does this action apply to me?
 - B. How can I get copies of this document and other related information?
 - C. What should I consider as I prepare my comments for EPA?
 - D. How and to whom do I submit comments?
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- III. What Are the Changes That EPA Is Approving?
- IV. What Action Is EPA Taking Today?
- V. Statutory and Executive Order Reviews

I. General Information

A. Does this action apply to me?

This action affects major stationary sources in Colorado that are subject to or potentially subject to the PSD or nonattainment NSR construction permit program.

B. How can I get copies of this document and other related information?

1. The Regional Office has established an electronic public rulemaking file available for inspection at RME under ID No. R08-OAR-2005-CO-0003, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air

and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:55 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and that are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office and as part of the electronic public rulemaking file (EDocket), as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

D. How and to whom do I submit comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 8 Air Docket R08-OAR-2005-CO-0003" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. Submit comments to the e-mail or street address given in the **ADDRESSES** section of this notice.

II. What Is Being Addressed in This Document?

We are proposing to approve portions of Colorado's revisions to the Stationary Source Permitting and Air Pollutant Emission Notice Requirements (Regulation No. 3), submitted by Colorado on July 11, 2005 and October 25, 2005, that relate to the Prevention of Significant Deterioration (PSD) and non-attainment New Source Review (NSR) construction permit programs of the State of Colorado. These revisions, among other revisions, to Regulation No. 3 were adopted by the Colorado Air Quality Control Commission on April 16, 2004. Regulation No. 3 includes the PSD and non-attainment NSR construction permit programs of the

State of Colorado. On February 3, 1983, EPA determined that Colorado's State Implementation Plan (SIP) satisfied all requirements of Part D of the Clean Air Act for regulating stationary sources in non-attainment areas (48 FR 29071). Colorado's Regulations for a Prevention of Significant Deterioration (PSD) program for attainment areas were Federally approved (with some exceptions) and made a part of the SIP on September 2, 1986 (51 FR 31125). Finally, Colorado adopted a merged NSR/operating permit program that was approved by EPA on January 21, 1997 (62 FR 2910).

On December 31, 2002, EPA published revisions to the federal PSD and non-attainment NSR regulations in 40 CFR parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as "NSR Reform" regulations and became effective nationally in areas not covered by a SIP on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). As stated in the rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of that rulemaking no later than January 2, 2006 (67 FR 80240). With the July 11, 2005 submittal, Colorado requested approval of program revisions into the State Implementation Plan (SIP) that satisfy this requirement.

On November 7, 2003, EPA published a reconsideration of the NSR Reform regulations that clarified two provisions in the regulations by including a definition of "replacement unit" and by clarifying that the plantwide applicability limitation (PAL) baseline calculation procedures for newly constructed units do not apply to modified units. On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR Reform revisions *State of New York et al. v. EPA*, 413 F.3d 3 (D.C. Cir. 2005). Although the Court upheld most of EPA's rules, it vacated both the Clean Unit and the Pollution Control Project provisions and remanded back to EPA the recordkeeping provision that required a stationary source to keep records of projects when there was a "reasonable possibility" that the project could result in a significant emissions increase.

Colorado's PSD and NSR program revisions were published in the Air Quality Control Commission Regulation

No. 3 (5 CCR 1001–5) on June 30, 2004 and are noted as Revision 4/16/2004. In the revised regulation Colorado noted that NSR Reform revisions will become effective in Colorado when the EPA approves that language for incorporation into the State Implementation Plan. This is noted in the Style Guide to Regulation No. 3, as “italicized text will become effective when the U.S. EPA approves that language for incorporation into the state implementation plan.” In addition, Colorado noted that provisions superceded by the NSR Reforms will be effective in Colorado only up to when EPA approves the new NSR Reform language into the State Implementation Plan. This is noted in the Style Guide to Regulation No. 3, as “underlined text will be effective until the U.S. EPA approves the italicized text for incorporation into the state implementation plan.” In the transmittal letter for the July 11, 2005 submission Colorado requested that EPA not take action, at this time, on the clean unit and PCP provisions of the state rule and on the term “reasonable possibility” in provisions D.V.A.7.c. and D.VI.B.5. of the state rule. In a September 28, 2005 letter to EPA, Colorado provided a revised list of provisions that Colorado requested EPA, at this time, not take action on. Colorado supplemented its July 11, 2005 request in an October 25, 2005 submission that provided two correct April 16, 2004 versions of Regulation No. 3. All of these documents are available for review as part of the Docket for this action.

III. What Are the Changes That EPA Is Approving?

EPA is proposing to approve those revisions adopted by Colorado on April 16, 2004 to Regulation No. 3 (Stationary Source Permitting and Air Pollutant Emission Notice Requirements) that incorporate EPA’s December 30, 2002 NSR Reforms (with the exceptions noted in the table below). EPA is also proposing to approve revisions Colorado made to Regulation No. 3 prior to the April 16, 2004 final rulemaking that

incorporate the revisions EPA made to the Federal NSR rules on July 21, 1992 (with the exceptions noted in the table below). These revisions are referred to as the WEPCO rule (for the Wisconsin Electric Power Company court ruling) and added definitions and provisions that have been incorporated into the April 16, 2004 version of Regulation No. 3.

In addition to incorporating the NSR Reforms into the April 16, 2004 Regulation No. 3 revision, Colorado also restructured Regulation No. 3, including adding a new Part D titled *Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration*. The new Part D contains most of the NSR/PSD definitions, provisions, and sections that were revised or newly created by the NSR Reform rule. In addition, numerous Regulation No. 3 Part A and Part B NSR/PSD definitions, provisions, and sections not revised by the NSR Reform rule, but already approved into the SIP, have been moved into the new Part D. EPA is proposing to approve the revisions to Regulation No. 3 creating the new Part D with the exceptions noted in the table below.

The revisions adopted by Colorado on April 16, 2004 have structured Regulation No. 3 as follows: Part A now contains general provisions applicable to reporting and permitting, Part B addresses construction permits; Part C (not a part of the SIP) includes the operating permit program; and Part D deals with the Nonattainment New Source Review and Prevention of Significant Deterioration programs for major stationary sources. Minor sources will only be subject to Parts A and B; major sources (as defined for the Operating Permit program) are governed by Parts A, B and C. Major stationary sources must comply with Parts A, B, C and D. In particular, this reorganization separated the major stationary source NSR provisions from the construction permit requirements applicable to all sources.

Part A Changes. EPA is proposing to approve changes Colorado made to Part

A where the NSR Reform rule added or changed specific language used in this Part (as specified in the table below). In addition, EPA is proposing to approve changes Colorado made in Part A that moved the provisions applying to major NSR to Part D (as specified in the table below). EPA is not taking action, at this time, on any other revisions, renumberings, additions, or deletions to Part A made by Colorado as part of the April 16, 2004 final rulemaking action. These other changes will be acted on by EPA in a separate action.

Changes to Part B. EPA is proposing to approve only the NSR Reform rule conforming changes Colorado made in Part B, which moved the provisions applying to major NSR to Part D (as specified in the table below). At this time, EPA is not taking action on any other revisions, renumberings, additions, or deletions to Part B made by Colorado as part of the April 16, 2004 final rulemaking action. These other changes will be acted on by EPA in a separate action.

Part D Changes. Colorado created Regulation No. 3 Part D in order to make Colorado’s air quality program consistent with the EPA NSR Reform rules. The references to NSR requirements in Part D include both the nonattainment NSR and PSD programs. Based on Colorado’s request, EPA is not taking action, at this time, on provisions related to clean units, pollution control projects, and the term “reasonable possibility” as it appears in D–V.A.7.c. and D–VI.B.5. EPA is proposing to approve the new Part D except for the specific provisions noted in the table below.

The following table specifies provisions of Regulation No. 3 that Colorado revised/renumbered or newly added in order to incorporate EPA’s NSR Reform and WEPCO rules and to create a separate NSR/PSD major stationary source part (Part D). The table also notes whether the provision is being proposed by EPA to be incorporated into the Colorado SIP.

| Provision location in Colorado's current SIP Reg. 3 (NA = not in current Colorado SIP) | Provision location in Colorado's 4/16/2004 Reg. 3 Revision | Provision description | EPA proposing to incorporate revision or addition into the SIP | Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166 | Comment (if applicable see footnote) |
|--|---|--|--|---|--|
| A-I.B.1 | D-II.A.1 | Actual emissions definition | Yes | 51.166(b)(21), 51.165(a)(1)(xii) | Note the reference in this definition to "II.A.1.a" should be to "II.A.1.a." and Colorado will correct this reference in a future revision of Regulation No. 3. EPA is proposing approval for this definition. See footnote 1. EPA is proposing approval for this definition. |
| A-I.B.7 | D-II.A.3 | Air Quality Related Value definition | Yes | N/A | See footnote 2. Colorado added "enforceable as a practical matter" and moved "future compliance date" phrase to this definition. EPA is proposing approval for this definition. See footnotes 1 and 2. EPA is proposing approval for this definition. |
| A-I.B.8 | A-I.B.7 | Allowable Emissions definition | Yes | 51.166(b)(16), 51.165(a)(1)(xi) | See footnote 2. Colorado added "enforceable as a practical matter" and moved "future compliance date" phrase to this definition. EPA is proposing approval for this definition. See footnotes 1 and 2. EPA is proposing approval for this definition. |
| A-I.B.10 | D-II.A.5 | Baseline Area definition | Yes | 51.166(b)(15) | EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.11 | D-II.A.6 | Baseline Concentration definition | Yes | 51.166(b)(13) | EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.12 | D-II.A.8 | Best Available Control Technology definition | Yes | 51.166(b)(12), 51.165(a)(1)(xi) | EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.15 | D-II.A.12 | Complete definition (for PSD/NSR purposes). | Yes | 51.166(b)(22) | EPA is proposing approval for this definition. See footnote 2. The reference in II.A.12.a.(vii) of this definition to "III.G.4. of Part B" is not in the current codified SIP. See footnote 2. |
| A-I.B.21 | D-II.A.16 | Federal Land Manager definition | Yes | 51.166(b)(24), 51.165(a)(1)(xii) | EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.31 | D-II.A.19 | Innovative Control Technology definition | Yes | 51.166(b)(19) | EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.32 | D-II.A.21 | Lowest Achievable Emission Rate definition | Yes | 51.166(b)(52), 51.165(a)(1)(xii) | EPA is proposing approval for this definition. See footnotes 1 and 2. |
| A-I.B.33 | D-II.A.24 | Major Source Baseline Date definition | Yes | 51.166(b)(14)(i) | EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.34 | D-II.A.26 | Minor Source Baseline Date definition | Yes | 51.166(b)(14)(ii) | EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.35.b | D-II.A.23 (except II.A.23.d(iii), (vii), (x), (xi), and (e)—see below). | Major Modification definition | Yes, except as noted below. | 51.166(b)(2), 51.165(a)(1)(v) | EPA is proposing approval for all of D-II.23, except sections D-II.A.23.d.(vii), (x), and (xi). Note that the provision in II.A.23.e that references "section II.A.2" should reference "II.A.31" and Colorado will correct this reference in a future revision of Regulation 3. See footnotes 1 and 2. EPA is proposing approval of this definition. See footnote 1. |
| N/A | D-II.A.23.d.(iii) | Use of an alternative fuel at a steam generating unit (part of Major Modification definition). | Yes | 51.166(b)(2)(iii)(d), 51.165(a)(1)(v)(C)(4)(iv). | |

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|-----------------------------------|--|---|-----------------------------|---|---|
| N/A | D-II.A.23.d(viii) | Addition replacement or use of a PCP * * * (part of Major Modification definition). | No | 51.166(b)(2)(iii)(h), 51.165(a)(1)(v)(C)(8) | EPA is not taking action on this part of the definition at this time at the request of Colorado. |
| N/A | D-II.23.d(x) | The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering (part of Major Modification definition). | No, as noted | 51.166(b)(2)(j) | EPA is not taking action, at this time, on this part of the definition. See footnote 3. |
| N/A | D-II.A.23.d(xi) | The reactivation of a very clean coal fired electric utility steam generating unit. (part of Major Modification definition). | No, as noted | 51.166(b)(2)(k) | EPA is not taking action, at this time, on this part of the definition. See footnote 3. |
| N/A | D-II.A.23.e | This definition shall not apply * * * for a PAL (part of Major Modification definition). | Yes | 51.166(b)(2)(iv), 51.165(a)(1)(v)(D) | EPA is proposing approval for this definition |
| A-I.B.36 | D-II.A.27. (except II.A.27.c.(iv) and II.A.g.(v)). | Net Emissions Increase definition | Yes | 51.166(b)(3), 51.165(a)(1)(vi) | Note that the reference in this definition should be to II.A.31 not II.A.2., and Colorado will correct this reference in a future revision of Regulation 3. See footnote 1. Colorado has added additional language at II.A.27.c.(iii), and II.A.27.g.(i). |
| N/A | D-II.A.27.c(iv) | Net emission increase at a clean unit (part of Net Emissions Increase definition). | No | 51.166(b)(3)(ii)(c), 51.165(a)(1)(v)(C)(3) | EPA is proposing approval for this definition. |
| N/A | D-II.A.27.g(v) | Net emissions increase at a clean unit and pollution control project (part of Net Emissions Increase definition). | No | 51.166(b)(3)(vi)(d), 51.165(a)(1)(v)(E)(5) | Note that provision II.A.27.a.(i) references "I.A.4." However, there is no I.A.4, and this reference will be deleted by Colorado. See footnotes 1 & 2. |
| A-I.B.44 | A-I.B.35 | Potential to Emit definition | Yes | 51.166(b)(4), 51.165(a)(1)(iii) | EPA is not taking action on this part of the definition at this time at the request of Colorado. |
| A-I.B.55 | D-II.A.43 | Secondary Emissions definition | Yes | 51.166(b)(18), 51.165(a)(1)(viii) | EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.57 | D-II.A.44 | Significant definition | Yes | 51.166(b)(23), 51.165(a)(1)(x) | EPA is proposing approval for this definition. See footnote 1. |
| A-I.B.58 Major Stationary Source. | D-II.A.25 | Major Stationary Source definition (introductory). | Yes, except as noted below. | 51.166(b)(1)(i), 51.165(a)(1)(iv) | EPA is proposing approval for this definition except for section D-II.A.25.b. |
| A-I.B.58.a | D-II.A.25.b | For the purpose of determining whether a source in a nonattainment area is subject. (part of Major Stationary Source definition). | No, as noted | 51.165(a)(1)(iv)(A)(1) | See footnote 2. EPA is not taking action, at this time, on this part of the definition. |
| A-I.B.58.b | D-II.A.25.a | For the purpose of determining whether a source in an attainment or unclassifiable area (part of Major Stationary Source definition). | Yes | 51.166(b)(1)(i)(a) | Provision A-I.B.58.a. in the current codified SIP remains in effect as part of the definition of Major Stationary Source. See footnote 4. EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.58.c | D-II.A.25.c | Major stationary source includes any physical change that would occur at a stationary source (part of Major Stationary Source definition). | Yes | 51.166(b)(1)(i)(c), 51.165(a)(1)(iv)(A)(2) | EPA is proposing approval for this definition. See footnote 2. |

| Provision location in Colorado's current SIP Reg. 3 (NA = not in current Colorado SIP) | Provision location in Colorado's 4/16/2004 Reg. 3 Revision | Provision description | EPA proposing to incorporate revision or addition into the SIP | Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166 | Comment (if applicable see footnote) |
|---|--|--|--|---|---|
| A-I.B.58.d | D-II.A.25.d | A major stationary source that is major for volatile organic compounds shall be considered major (part of Major Stationary Source definition). | Yes | 51.166(b)(1)(ii), 51.165(as)(1)(iv)(B) | EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.58.f | D-II.A.25.e | The fugitive emissions of a stationary source shall not be included (part of Major Stationary Source definition). | Yes | 51.166(b)(1)(iii), 51.165(a)(1)(iv)(C) | EPA is proposing approval for this definition. See footnote 2. |
| A-I.B.58.e | D-II.A.25.f | Emissions caused by indirect air pollution sources (part of Major Stationary Source definition). | Yes | N/A | EPA is proposing approval for this definition. The reference in this definition to "I.B.22. of Part A" is at A-I.B.58. in the current codified SIP. See footnote 2. |
| A-I.B.58.g | D-II.A.25.g | A major stationary source in the Denver Metro PM10 (part of Major Stationary Source definition). | Yes | | EPA is proposing approval for this definition. See footnote 2. |
| N/A | D-III. | Permit Review Procedures | Yes | | EPA is proposing approval for this section. See footnote 2. |
| N/A | D-III.A | Major Stationary Sources must apply for CP or OP. | Yes | | EPA is proposing approval for this section. See footnote 2. |
| B-IV.B.5 | D-III.B | Process PSD applications w/in 12 months | Yes | | EPA is proposing approval for this section. See footnote 2. |
| N/A | D-IV | Public Comment Requirements | Yes | 51.166(q) | EPA is proposing approval for this section. See footnote 2. |
| N/A | D-IV.A | Public Notice | Yes | 51.166(q) | EPA is proposing approval for this section. Copied from Part B, IV.C.4. of current codified SIP. |
| B-IV.C.4.--from "For sources subject to the provisions of section IV.D.3." to "The newspaper notice". | D-IV.A.1 | Public notice of NSR and PSD permit applications. | Yes | 51.166(g)(ii) and (iv) | EPA is proposing approval for this section. See footnote 2. |
| B-IV.C.4.f | D-IV.A.2 | Additionally, for permit applications * * * (request comment on). | Yes | 51.166(a)(iii) | EPA is proposing approval for this section. See footnote 2. |
| B-IV.C.5 | D-IV.A.3 | Within 15 days after prepare PA | Yes | N/A | EPA is proposing approval for this section. See footnote 2. |
| B-IV.C.6 | D-IV.A.4 | Hearing request for innovative control | Yes | N/A | EPA is proposing approval for this section. See footnote 2. |
| B-IV.C.7 | D-IV.A.5 | Hearing request transmitted to commission. | Yes | N/A | EPA is proposing approval for this section. See footnote 2. |
| B-IV.C.8 | D-IV.A.6 | Commission shall hold public comment hearing. | Yes | 51.166(q)(v) | EPA is proposing approval for this section. See footnote 2. |
| B-IV.C.9 | D-IV.A.7 | 15 days after division makes final decision on application. | Yes | 51.166(q)(viii) | EPA is proposing approval for this section. See footnote 2. |

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| B-IV.D.2 | D-V | Requirements Applicable to Non-attainment Areas (Introductory). | Yes | N/A | EPA is proposing approval for this section. |
| B-IV.D.2.a | D-V.A | Major Stationary Sources | Yes | 51.165, Appx. S.IV.A | EPA is proposing approval for this section. See footnote 2. |
| B-IV.D.2.a(i) through (iii) | D-V.A.1, through 3 | Major Stationary Sources | Yes | 51.165, Appx. S.IV.A Conditions 1-4 | The reference in D-V.A. to "III.D.1. of Part B" is at B-IV.D.1. in the current codified SIP. |
| B-IV.D.2.a.(iii)(C) 2nd par | D-V.A.3.d | With respect to offsets from outside non-attainment area. | Yes | 51.165, Appx. S.IV.D | EPA is proposing approval for this section. See footnote 2. |
| B-IV.D.2.a.(iv) | D-V.A.4 | The permit application shall include an analysis of alternative sites | Yes | 51.165, Appx. S.IV.D | EPA is proposing approval for this section. See footnote 2. |
| B-IV.D.2.a.(v) | D-V.A.5 | Offsets for which emission reduction credit is taken | Yes | 51.165, Appx. S.V.A | EPA is proposing approval for this section. See footnote 2. |
| B-IV.D.2.a(vi) | D-V.A.6 | The applicant will demonstrate that emissions from the proposed source will not adversely impact visibility | Yes | N/A | EPA is proposing approval for this section. See footnote 2. |
| B-IV.D.2.b | D-V.A.7 | Applicability of Certain Nonattainment Area Requirements. | Yes | N/A | EPA is proposing approval for this section. See footnote 2. |
| B-IV.D.2.b.(i) | D-V.A.7.a | Any major stationary source in a non-attainment area | Yes | N/A | EPA is proposing approval for this section. See footnote 2. |
| B-IV.D.2.b.(ii) | D-V.A.7.b | The requirements of section V.A. shall apply at such time that any stationary source | Yes | 51.165(a)(5)(ii) | EPA is proposing approval for this section. See footnote 2. |
| N/A | D-V.A.7.c | The following provisions apply to projects at existing emissions units ("Reasonable possibility" provisions in non-attainment areas) (part of Applicability of Certain Nonattainment Area Requirements). | Yes, except as noted in comment section. | 51.165(a)(6) | EPA is not taking action on the terms "clean unit" or "reasonable possibility" used in this provision at this time at the request of Colorado |
| N/A | D-V.A.7.d | Documents available for review upon request (part of Applicability of Certain Nonattainment Area Requirements). | Yes | 51.165(a)(7) | EPA is proposing approval for this provision. See footnote 1. |
| B-IV.D.2.c (and subsections). | D-V.A.8 | Exemptions from Certain Nonattainment Area Requirements. | Yes | 51.165, Appx. S.IV.B | EPA is proposing approval for this section. See footnote 2. |
| B-IV.D.3 | D-VI | Requirements Applicable to Attainment Areas (Introductory). | Yes | N/A | EPA is proposing approval for this provision. See footnote 2. |
| B-IV.D.3.a. (and subsections not listed below). | D-VI.A | Major Stationary Sources and Major Modifications. | Yes | 51.166(j) | EPA is proposing approval for this section. See footnote 2. |
| B-IV.D.3.a(i)(C) | D-VI.A.1.c | For phased construction | Yes | 51.166(j)(4) | The reference in D-VI.A. to "III.D.1. of Part B" is at B-IV.D.1. in the current codified SIP. |
| B-IV.D.3.a.(iii)(D) | D-VI.A.3.d | In general, the continuous air monitoring data. | Yes | 51.166(m)(1)(iv) | EPA is proposing approval for this provision. See footnote 1 and 2. |
| B-IV.D.3.a.(iii)(D) | D-VI.A.4 | Post-construction monitoring | Yes | 51.166(m)(2) | EPA is proposing approval for this provision. See footnotes 1 and 2. |

| Provision location in Colorado's current SIP Reg. 3 (N/A = not in current Colorado SIP) | Provision location in Colorado's 4/16/2004 Reg. 3 Revision | Provision description | EPA proposing to incorporate revision or addition into the SIP | Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166 | Comment (if applicable see footnote) |
|---|--|--|--|---|---|
| B-IV.D.3.b | D-VI.B | Applicability of Certain PSD Requirements | Yes | N/A | Colorado has revised this provision to make post construction monitoring at the director's discretion as allowed by 51.166(m)(2). EPA is proposing approval for this provision. See footnote 1 and 2. |
| B-IV.D.3.b.(i) | D-VI.B.1 | The requirements of section VI.A. do not apply. | Yes | 51.166(i)(1) and (2) | EPA is proposing approval for this provision. See footnote 2. |
| B-IV.D.3.b.(ii) | D-VI.B.2 | The requirements contained in sections VI.A.2 through VI.A.4. | Yes | 51.166(i)(3) and 4 | EPA is proposing approval for this provision. See footnote 2. |
| B-IV.D.3.b.(iii) | D-VI.B.3. (including D-VI.B.3.b., c., and d). | The division may exempt a proposed major stationary source or major modification from the requirements of sections VI.A.3. through VI.A.5. of this Part, with respect to monitoring for a particular pollutant if: * * * | Yes | 51.166(i)(5) | Colorado has reworded D-VI.B.3. and deleted unnecessary language. EPA is proposing approval for this provision. See footnote 2. |
| B-IV.D.3.b.(iii)(A)(1)-(12) | D-VI.B.3.a.(i)-(ix) | deleted Mercury, Beryllium, Vinyl chloride | Yes | 51.166(i)(5)(i) | EPA is proposing approval for this provision. See footnote 2. |
| B-IV.D.3.b.(iv) | D-VI.B.4 | The requirements of this Part D shall apply * * * | Yes | 51.166(i)(6) | EPA is proposing approval for this provision. See footnote 2. |
| N/A | D-VI.B.5 | The following provisions apply to projects at existing emissions units * * * ("Reasonable possibly" provisions PSD). (Part of Applicability of Certain PSD Requirements). | Yes, except as noted in comment section. | 51.166(i)(6) | EPA is proposing approval for this section with the exception that EPA is not taking action on the terms "clean unit" or "reasonable possibly" used in this provision, at this time, at the request of Colorado. See footnote 1 and 5. |
| N/A | D-VI.B.6 | documents available for review upon request. (part of Applicability of Certain PSD Requirements). | Yes | 51.166(i)(7) | EPA is proposing approval for this provision. See footnote 1. |
| B-IV.D.3.b.(v) | D-VI.B.7 | A stationary source or modification may apply. | Yes | 51.166(i)(9) | EPA is proposing approval for this provision. See footnote 2. |
| B-IV.D.3.c | D-VI.C | Notice to EPA | Yes | 51.166(p)(1) | EPA is proposing approval for this provision. See footnote 2. |
| B-IV.D.3.d | D-VI.D | Major Stationary Sources in attainment areas affecting nonattainment area. | Yes | 51.165(b) | EPA is proposing approval for this section. The reference in D-VI.D. to "III.D.1. of Part B" is at B-IV.D.1 in the current codified SIP. See footnote 2. |
| B-IV.D.4 | D-VII | Negligibly Reactive VOCs | Yes | 51.100(s) | EPA is proposing approval for this provision. See footnote 2. |
| B-V | D-VIII | Area Classifications | Yes, with the exception of D-VIII.B. | 51.166(e) | EPA is proposing approval for this provision with the exception of D-VIII.B. See footnote 2. |

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| N/A | D-VIII.B | All other areas of Colorado, (part of Area Classifications). | No | N/A | This provision is not in the currently codified SIP. EPA is not proposing approval as part of this action. See FR Notice of 3/25/98 (14357). EPA is proposing approval for this provision. |
| B-VI | D-IX | Redesignation | Yes | 51.166(e) | See footnote 2. EPA is proposing approval for this provision with the exception of D-X.A.5. See footnote 2. |
| B-VII | D-X | Air Quality Limitations | Yes, with the exception of D-X.A.5. | 51.166(c) | This provision is not in the currently codified SIP. EPA is not proposing approval as part of this action. See FR Notice of 3/25/98 (14357). EPA is proposing approval for this provision. |
| N/A | D-X.A.5 | Increment Consumption Restriction (part of Air Quality Limitations). | No | N/A | See footnote 2. |
| B-VIII | D-XI | Exclusions from Increment Consumption | Yes | 51.166(f) | EPA is proposing approval for this provision. |
| B-IX | D-XII | Innovative Control Technology | Yes | 51.166(s) | See footnote 2. |
| B-X | D-XIII | Federal Class I Areas | Yes | 51.166(p) | EPA is proposing approval for this provision. |
| B-XI | D-XIV | Visibility | No | N/A | The reference in D-XIII.C. to "III.B. of Part B" is at B-IV.b. in the current codified SIP. See footnote 2. EPA is not taking action on this section. This section will be acted on by EPA as a separate action. |
| N/A | A-I.B.13 | CEMS definition | Yes | 51.166(b)(43), 51.165(a)(1)(xxxiv) | EPA is proposing approval for this provision. |
| N/A | A-I.B.14 | CERMS definition | Yes | 51.166(b)(46), 51.165(a)(1)(xxxiv) | See footnote 1. EPA is proposing approval for this provision. |
| N/A | A-I.B.15 | CPMS definition | Yes | 51.166(b)(45), 51.165(a)(1)(xxxiv) | See footnote 1. EPA is proposing approval for this provision. |
| N/A | A-I.B.33 | Pollution Prevention definition | Yes | 51.166(b)(38), 51.165(a)(1)(xxvi) | See footnote 1. EPA is proposing approval for this provision. |
| N/A | A-I.B.36 | PEMS definition | Yes | 51.166(b)(44), 51.165(a)(1)(xxxii) | See footnote 1. EPA is proposing approval for this provision. |
| N/A | D-I.A | General Applicability (Introductory) | Yes | 51.166(a)(7), (iv)(a) and (b), 51.165(a)(2)(iii) (A) and (B). | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-I.B. (except 1.b.3. and second sentence of 1.B.4.). D-I.B.3 | Applicability Tests | Yes | 51.166(a)(7)(iv)(c), (d), and 51.165(a)(2)(ii)(C), (D), and (F). | See footnote 1. EPA is proposing approval for this definition with the exception of I.B.3. and the second sentence of I.B.4. |
| N/A | | Emissions tests at clean units (part of Applicability Tests). | No | 51.166(a)(7)(iv)(e), 51.165(a)(2)(ii)(E) | EPA is not taking action on this provision at this time at the request of Colorado. The reference in D-I.B.5. to "I.B.26. of Part A" is at A-I.B.35.c. in the current codified SIP. See footnote 1. |
| N/A | D-I.B.4. Second sentence. | For example, for a project involves both an existing unit and a clean unit. | No | 51.166(a)(7)(iv)(f) second sentence, 51.165(a)(2)(ii)(F) second sentence. | EPA is not taking action on this part of provision D-I.B.4 at this time at the request of Colorado. |
| N/A | D-I.C | For any major station/Any source requesting, or operating under, a Plantwide Applicability Limitation. | Yes | 51.166(a)(7)(v), 51.165(a)(2)(iii) | EPA is proposing approval for this provision. |
| N/A | D-I.D | An owner or operator undertaking a Pollution Control Project. | No | 51.166(a)(7)(vi), 51.165(a)(2)(iv) | See footnote 1. EPA is not taking action on this provision at this time at the request of Colorado. |

| Provision location in Colorado's current SIP Reg. 3 (N/A = not in current Colorado SIP) | Provision location in Colorado's 4/16/2004 Reg. 3 Revision | Provision description | EPA proposing to incorporate revision or addition into the SIP | Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166 | Comment (if applicable see footnote) |
|---|--|---|--|---|--|
| N/A | D-II.A.2 | Actuals PAL Definition | Yes | 51.166(w)(2)(i) 51.165(f)(2)(i) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.4 | Baseline Actual Emissions definition | Yes | 51.166(b)(47), 51.165(a)(1)(xxxv) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.7 | Begin Actual Construction definition | Yes | 51.166(b)(II), 51.165(a)(1)(xv) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.9 | Clean Coal Technology definition | Yes | 51.166(b)(33), 51.165(a)(1)(xxiii) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.10 | Clean Coal Technology Demonstration Project definition. | Yes | 51.166(b)(34), 51.165(a)(1)(xxiv) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.11 | Clean Unit definition | No | 51.166(b)(41), 51.165(a)(1)(xxix) | EPA is not taking action on this definition at this time at the request of Colorado. |
| N/A | D-II.A.13 | Construction definition | Yes | 51.166(b)(8), 51.165(a)(1)(xxviii) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.14 | Emissions Unit definition (for PSD/NSR purposes). | | 51.166(b)(7), 51.165(a)(1)(xvii) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.15 | Electric Utility Steam Generating Unit definition. | Yes | 51.166(b)(30), 51.165(a)(1)(xx) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.17 | High Terrain definition | Yes | 51.166(b)(25) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.18 | Hydrocarbon Combustion Flare definition | | 51.166(b)(31)(iv), 51.165(a)(1)(xx)(D) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.20 | Low Terrain definition | Yes | 51.166(b)(26) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.22 | Major Emissions Unit definition | Yes | 51.166(w)(2)(iv), 51.165(f)(2)(iv) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.28 | Nonattainment New Source Review definition. | Yes | 51.165(a)(1)(xxx) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.29 | PAL Effective Date definition | Yes | 51.166(e)(2)(iv), 51.165(f)(2)(vi) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.30 | PAL Effective Period definition | Yes | 51.166(e)(2)(vii), 51.165(f)(2)(vii) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.31 | PAL Major Modification definition | Yes | 51.166(w)(2)(viii), 51.165(f)(2)(viii) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.32 | PAL Permit definition | Yes | 51.166(w)(2)(ix), 51.165(f)(2)(ix) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.33 | PAL Pollutant definition | Yes | 51.166(w)(2)(x), 51.165(f)(2)(x) | EPA is proposing approval for this definition. See footnote 1. |
| N/A | D-II.A.34 | Plantwide Applicability Limitation (PAL) definition. | Yes | 51.166(w)(2)(v), 51.165(f)(2)(v) | EPA is proposing approval for this definition. See footnote 1. |

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| N/A | D-II.A.35 | Pollutant Control Project definition | No | 51.166(b)(31), 51.165(a)(1)(xxv) | EPA is not taking action on this definition at this time at the request of Colorado. |
| N/A | D-II.A.36 | Prevention of Significant Deterioration Permit definition. | Yes | 51.166(b)(42), 51.165(a)(1)(xli) | EPA is proposing approval for this definition. |
| N/A | D-II.A.37 | Project definition | Yes | 51.166(b)(51), 51.165(a)(1)(xxix) | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-II.A.38 | Projected Actual Emissions definition | Yes | 51.166(b)(40), 51.165(a)(1)(xxviii) | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-II.A.39 | Reactivation of Very Clean Coal-Fired EUSGU definition. | Yes | 51.166(b)(37) | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-II.A.40 | Regulated NSR Pollutant definition | Yes | 51.166(b)(49), 51.165(a)(1)(xxxvii) | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-II.A.41 | Replacement Unit definition | Yes | 51.166(b)(32), 51.165(a)(1)(xxi) | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-II.A.42 | Repowering definition | Yes | 51.166(b)(36) | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-II.A.45 | Significant Emissions Increase definition | Yes | 51.166(b)(39), 51.165(a)(1)(xxvii) | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-II.A.46 | Significant Emissions Unit definition | Yes | 51.166(w)(2)(xi), 51.165(f)(2)(xi) | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-II.A.47 | Small Emissions Unit definition | Yes | 51.166(w)(2)(iii), 51.165(a)(1)(iii) | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-II.A.48 | Temporary Clean Coal Demonstration Project definition. | Yes | 51.166(b)(35), 51.165(a)(1)(XXII) | See footnote 1. EPA is proposing approval for this definition. |
| N/A | D-XV | Clean Units | No | 51.166(t) and (u), 51.165(c) and (d) | See footnote 1. EPA is not taking action on this section, at this time, at the request of Colorado. |
| N/A | D-XVI | Pollution Control Projects | No | 51.166(v), 51.165(e) | EPA is not taking action on this section, at this time, at the request of Colorado. |
| N/A | D-XVII | Plantwide Applicability Limitations | Yes | 51.166(v), 51.165(f) | EPA is proposing approval for this section. |

Footnote 1: We are proposing to approve this new rule in Regulation No. 3 because the rule is identical or consistent with the Federal New Source Review regulations found at 40 CFR 51.166 and contain no changes to the language that would effect the meaning of the rule.

Footnote 2: We are proposing to approve this change of an existing Regulation No. 3 rule because the rule has only been renumbered, contains nonsubstantive changes to the rule that do not effect the meaning of the rule and/or has been modified to move a definition that has already been approved into the SIP to a specific rule section in which the definition applies. This renumbered rule and all subsections within this rule supersede and replace the prior numbered rule and subsections in Colorado's federally approved SIP.

Footnote 3: Colorado has marked this part of the definition of Major Modification as undefined, meaning that the State intends it will only be effective until EPA approves the NSR Reform revisions for incorporation into the SIP. Colorado has since clarified that they intended that this provision remain as part of the definition of Major Modification as it applies to PSD sources located in attainment areas only, consistent with 40 CFR 51.166(b)(2)(j). If Colorado revises Regulation No. 3 to indicate this clarification prior to EPA taking final action, EPA proposes to approve this addition to the definition of Major Modification into the SIP.

Footnote 4: Colorado's SIP submittal deletes the following language in D-II.A.25.b from what is in the current codified SIP definition of Major Stationary Source (at A-I.B.58.a.):

The references in XVII.N.1.g and XVII.N.2.d of this section to "i.B.38. of Part A" are at A-I.B.53 in the current codified SIP.

Colorado has revised D-SVII.1.2. (application deadline) to 12 months prior to expiration instead of 6 months.

Colorado has revised XVII.N.1. (Semi-Annual Report) to require submission of QA/QC data as requested, not as part of the semi annual report specified in 51.166(w)(14)(i)(c).

See footnote 1.

In the Denver Metro PM10 nonattainment area, sulfur dioxide and nitrogen oxides shall be treated as PM10 precursors, and any source which is major for these precursors is subject to the nonattainment new source review provisions. Additionally, a source causing or contributing to a violation of a NAAQS for any pollutant regulated under Section 110 of the Federal Act shall be considered major when it has the potential to emit 100 tons per year or more of that pollutant. The source will be considered to cause or contribute to a violation when the source exceeds the significance levels in the table under Section IV.D.3.d(ii), Part B. Such source is subject to the requirements of IV.D.3.

Colorado's deletion of the first sentence that refers to the Denver Metro PM10 nonattainment area could be proposed for approval by EPA since the Denver Metro area is now in attainment for PM-10. However, EPA is not proposing to approve D-II.A.25.b into the SIP at this time because of the deletion of the remaining language in the second and third sentences. Colorado has not provided a justification for the deletion of the second and third sentences. These sentences appear to provide a link between Colorado's use of the phrase "significantly affect ambient air quality", as used in D-VI.D.1. of Regulation No. 3, and the phrase "cause or contribute to a violation of any NAAQS", as used in 40 CFR 51.165(b)(1). If Colorado revises Regulation No. 3 to add this deleted language back into the definition of Major Stationary Source prior to EPA taking final action, EPA proposes to approve this part of the definition of Major Stationary Source into the SIP. Otherwise the currently codified SIP language that is part of the definition of Major Stationary Source at A-I.B.58.a. will remain in the SIP.

Footnote 5: EPA has discussed with the Colorado Department of Public Health and Environment (CDPHE) on how it intends to implement provisions D-V.A.7.c. and D-VI.B.5. without the terms "reasonable possibility" included as part of these provisions. CDPHE's intent is that Colorado will implement the rule consistently with EPA's policy and guidance. Additionally, CDPHE provided a letter to EPA dated Nov 28, 2005 that stated their intent is to also "request that the Commission make any revisions to incorporate and implement federal program revisions should it be necessary for EPA to take further action on the remand of the Code of Federal Regulations, Title 40, sections 51.165(a)(6) and 51.166(f)(6)." Therefore, EPA proposes to approve Colorado's rule without the terms "reasonable possibility" since Colorado will be implementing this rule provision in a manner consistent with EPA.

IV. What Action Is EPA Taking Today?

EPA is proposing to approve portions of Colorado's revisions to Regulation No. 3, submitted by Colorado on July 11, 2005 and October 25, 2005, that relate to the PSD and NSR construction permits program. These revisions meet the minimum program requirements of the December 31, 2002, EPA NSR Reform rulemaking. EPA will take action at a later date on the remaining revisions made by Colorado to Regulation No. 3 as adopted on April 16, 2004 by the Colorado Air Quality Control Commission. This future action will allow EPA to consider the complete Regulation No. 3 restructuring and other previously submitted SIP revision requests for Regulation No. 3.

V. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and 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.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," 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).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve 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 (Pub. L. 104-4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed 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 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

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 proposes to approve 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.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This proposed 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 is not economically significant.

National Technology Transfer Advancement Act

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.

Paperwork Reduction Act

This proposed 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.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: November 28, 2005.

Max H. Dodson,

Acting Regional Administrator, Region 8.

[FR Doc. 05-23712 Filed 12-6-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2005-0240; FRL-7737-5]

Pesticides; Revisions to Tolerance Exemptions for Polymers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to remove the molecular weight limitations from the tolerance exemption expression for certain polymeric substances codified in 40 CFR 180.960. These exemptions from the requirement of a tolerance were established based on the polymer's meeting the criteria established by the Agency in 40 CFR 723.250, which define a low risk polymer. The Agency is acting on its own initiative.

DATES: Comments must be received on or before February 6, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP-2005-0240, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.
- *Agency Website:* EDOCKET, EPA's electronic public and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions.
- *E-mail:* Comments may be sent by e-mail to: opp-docket@epa.gov, Attention: Docket ID Number OPP-2005-0240.
- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,