

of CAA Section 110(a)(1) and (2) relevant to the 1997 8-hour ozone NAAQS. The State's 1997 Ozone Infrastructure SIP is approved with respect to the requirements of the following elements of section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2005-CO-0003, FRL-9616-7]

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving those revisions adopted by the State of 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. EPA is approving 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 are being acted on by EPA in a separate final action related to Colorado's Interstate Transport SIP (see proposed action at 76 FR 21835, April 19, 2011). Colorado has a federally approved NSR program for new and modified sources impacting attainment and non-attainment areas in the State. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective May 10, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2005-CO-0003. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some

information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](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. 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 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Scott Jackson, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6107, [jackson.scott@epa.gov](mailto:jackson.scott@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Background for This Action
  - A. What revisions to the Colorado SIP does this action address?
- II. Response to Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

##### Definitions

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

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *SIP* mean or refer to State Implementation Plan.
- (iv) The words *State* or *Colorado* mean the State of Colorado, unless the context indicates otherwise.

#### I. Background for This Action

On December 7, 2005 (70 FR 72744), EPA published a notice of proposed rulemaking (NPR) for the State of Colorado. The NPR proposed approval of portions of Colorado's revisions to the Stationary Source Permitting and Air Pollutant Emission Notice Requirements (Regulation No. 3) that incorporate EPA's December 31, 2002 NSR Reforms. The State of Colorado submitted the formal SIP revision on July 11, 2005 followed by a supplemental submittal on October 25, 2005. This final action

updates the federally approved SIP to reflect changes made by Colorado that were reviewed and deemed approvable into the Colorado SIP (Code of Federal Regulations part 52, subpart G).

On December 31, 2002, EPA published revisions to the federal 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 included 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's July 11, 2005 submittal and October 25, 2005 supplemental submittal request approval for its regulations to implement the NSR Reform provisions that were not vacated or remanded by the June 24, 2005, court decision.

#### A. What revisions to the Colorado SIP does this action address?

EPA is approving 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 approving 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 approving 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 NSR and PSD 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 approving 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 approving 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, in this document, 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 are being acted on by EPA in a separate final action related to Colorado's Interstate Transport SIP (see proposed action at 76 FR 21835, April 19, 2011) and are noted in the table below.

**Part B Changes.** EPA is approving 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). In this document, 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 are being acted on by EPA in a separate final action related to Colorado's Interstate Transport SIP (see proposed action at 76 FR 21835, April 19, 2011) and are noted in the table below.

**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. EPA is approving 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 WEPSCO rules and to create a separate NSR/PSD major stationary source part (Part D). In addition, some of the provisions that were proposed for approval in the notice of proposed rulemaking that EPA published on December 7, 2005 are being acted on by EPA in a separate final action related to Colorado's Interstate Transport SIP (see proposed action at 76 FR 21835, April 19, 2011) and are noted in the table below.

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 is incorporating all or part of revision or addition into the SIP	Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166	How provision is acted on in this action (if applicable see footnote)	How provision is acted on by EPA in a separate final action related to Colorado's interstate transport SIP (see proposed action at 76 FR 21835, April 19, 2011)
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 "I.B.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 approving this definition. See footnote 1.	Partially Approved * * * With respect to the renumbering and the modification of the provision to the extent that the term "regulated NSR pollutant" replaces "air pollutant regulated under the Federal Act" but no other modification of the provision.
A-I.B.7 .....	D-II.A.3 .....	Air Quality Related Value definition.	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
A-I.B.8 .....	A-I.B.7 .....	Allowable Emissions definition.	Yes .....	51.166(b)(16), 51.165(a)(1)(xi).	Colorado added "enforceable as a practical matter" and moved "future compliance date" phrase to this definition. EPA is approving this definition. See footnotes 1 and 2.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
A-I.B.10 .....	D-II.A.5 .....	Baseline Area definition.	Yes .....	51.166(b)(15) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
A-I.B.11 .....	D-II.A.6 .....	Baseline Concentration definition.	Yes .....	51.166(b)(13) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
A-I.B.12 .....	D-II.A.8 .....	Best Available Control Technology definition.	Yes .....	51.166(b)(12), 51.165(a)(1)(xl).	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.

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A-I.B.15 .....	D-II.A.12 .....	Complete definition (for PSD/NSR purposes).	Yes .....	51.166(b)(22) .....	Approved by interstate transport NFR. See next column. Note 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.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
A-I.B.21 .....	D-II.A.16 .....	Federal Land Manager definition.	Yes .....	51.166(b)(24), 51.165(a)(1)(xlii).	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
A-I.B.31 .....	D-II.A.19 .....	Innovative Control Technology definition.	Yes .....	51.166(b)(19) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
A-I.B.32 .....	D-II.A.21 .....	Lowest Achievable Emission Rate definition.	Yes .....	51.166(b)(52), 51.165(a)(1)(xlii).	EPA is approving the language change. See footnote 1.	Partially approved * * * Only approved renumbering. NSR NFR will approve the language change.
A-I.B.33 .....	D-II.A.24 .....	Major Source Baseline Date definition.	Yes .....	51.166(b)(14)(i) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
A-I.B.34 .....	D-II.A.26 .....	Minor Source Baseline Date definition.	Yes .....	51.166(b)(14)(ii) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
A-I.B.35.b .....	D-II.A.23. (except II.A.23.d(iii), (viii), (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 approving portions of D-II.23 not acted on by EPA in a separate final action related to Colorado's Interstate Transport SIP. 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.	Partially Approved * * * With respect to the renumbering and the modification of the provision to the extent that the term "regulated NSR pollutant" replaces "air pollutant regulated under the Federal Act" but no other modification of the provision. EPA is approving the renumbering of all of II.23 (except sections D-II.A.23.d.(viii), (x), and (xi)), and, in II.A.23, prior to subsection II.A.23.a, the replacement of the term "air pollutant subject to regulation under the Federal Act or the State Act" with the term "regulated NSR pollutant." 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.
N/A .....	D-II.A.23.d.(iii) .....	Use of an alternative fuel at a steam generating unit (part of Major Mod definition).	Yes .....	51.166(b)(2)(iii)(d), 51.165(a)(1)(v)(C)(4)(iv).	EPA is approving this definition. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
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 considers this provision withdrawn by the State. See footnote 6.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.23.d(x) .....	The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering * * * (part of Major Modification definition).	Yes, as noted .....	51.166(b)(2)(j) .....	EPA is approving this definition as clarified. See footnote 3.	Not taking action * * * Because it was not a necessary prerequisite for our action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.

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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).	Yes, as noted .....	51.166(b)(2)(k) .....	EPA is approving this definition as clarified. See footnote 3.	Not taking action * * * Because it was not a necessary prerequisite for our action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.23.e .....	This definition shall not apply * * * for a PAL (part of Major Mod definition).	Yes .....	51.166(b)(2)(iv), 51.165(a)(1)(v)(D).	EPA is approving this definition. 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.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
A-I.B.36 .....	D-II.A.27. (except II.A.27.c.(iv) and II.A.27.g.(v)).	Net Emissions Increase definition.	Yes .....	51.166(b)(3), 51.165(a)(1)(vi).	Colorado has added additional language at II.A.27.c.(iii), and II.A.27.g.(i). EPA is approving this definition. 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 footnote 1 & 2.	Partially Approved * * * With respect to the renumbering and the modification of the provision to the extent that the term "regulated NSR pollutant" replaces "air pollutant regulated under the Federal Act" but no other modification of the provision.
N/A .....	D-II.A.27.c.(iv) .....	Net emissions increase at a clean unit (part of Net Emissions Increase definition).	No .....	51.166(b)(3)(iii)(c), 51.165(a)(1)(vi)(C)(3).	EPA considers this provision withdrawn by the State. See footnote 6.	Not Taking Action on this part of the definition at this time.
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)(vi)(E)(5).	EPA considers this provision withdrawn by the State. See footnote 6.	Not Taking Action on this part of the definition at this time.
A-I.B.44 .....	A-I.B.35 .....	Potential to Emit definition.	Yes .....	51.166(b)(4), 51.165(a)(1)(iii).	EPA is approving this definition. See footnote 2.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
A-I.B.55 .....	D-II.A.43 .....	Secondary Emissions definition.	Yes .....	51.166.(b)(18), 51.165(a)(1)(viii).	EPA is approving the language change for this definition. See footnote 1.	Partially approved * * * Only approved renumbering. NSR NFR will approve the language change.
A-I.B.57 .....	D-II.A.44 .....	Significant definition ..	No, see comment .....	51.166.(b)(23), 51.165(a)(1)(x).	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made. Note: our approval of the 8/1/07 submission modifies this definition.
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).	Approved by interstate transport NFR. D-II.A.25.b was not approved.	Partially approved * * * Because the provision has only been renumbered and no substantive changes were made. D-II.A.25.b was not approved.
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).	Yes, as noted .....	51.165(a)(1)(iv)(A)(1) .....	EPA is approving this provision. See footnote 4.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
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) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.

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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).	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
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(a)(1)(iv)(B).	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made. Note: our approval of the 8/1/07 submission modifies this definition.
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).	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
A-I.B.58.e .....	D-II.A.25.f .....	Emissions caused by indirect air pollution sources (part of Major Stationary Source definition).	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made. The reference in this definition to "I.B.22. of Part A" is at A-I.B.58. in the current codified SIP.
A-I.B.58.g .....	D-II.A.25.g .....	A major stationary source in the Denver Metro PM <sub>10</sub> * * * (part of Major Stationary Source definition).	Yes .....	NA .....	Action taken by interstate transport SIP. See next column.	Not taking action EPA is not acting on this definition in this action. This definition was not included in Colorado's October 25, 2005 submission of Regulation No. 3, and was therefore proposed for approval erroneously in EPA's December 7, 2005 proposed approval.
N/A .....	D-III .....	Permit Review Procedures.	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved.
N/A .....	D-III.A .....	Major Stationary Sources must apply for CP or OP.	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved.
B-IV.B.5 .....	D-III.B .....	Process PSD applications w/in 12 months.	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
N/A .....	D-IV .....	Public Comment Requirements.	Yes .....	51.166(q) .....	Approved by interstate transport NFR. See next column.	Fully approved.
N/A .....	D-IV.A .....	Public Notice .....	Yes .....	51.166(q) .....	Approved by interstate transport NFR. See next column.	Fully approved. Copied from Part B, IV.C.4. of current codified SIP. The reference in D-IV.A. to "III.C.3. of Part B" is at B-IV.C.3. in the 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(q)(ii) and (iv) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.C.4.f .....	D-IV.A.2 .....	Additionally, for permit applications (request comment on).	Yes .....	51.166(q)(iii) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.C.5 .....	D-IV.A.3 .....	Within 15 days after prepare PA.	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.C.6 .....	D-IV.A.4 .....	Hearing request for innovative control.	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.C.7 .....	D-IV.A.5 .....	Hearing request transmitted to commission.	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.

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B-IV.C.8 .....	D-IV.A.6 .....	Commission shall hold public comment hearing.	Yes .....	51.166(q)(v) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.C.9 .....	D-IV.A.7 .....	15 days after division makes final decision on application.	Yes .....	51.166(q)(viii) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.D.2 .....	D-V .....	Requirements Applicable to Non-attainment Areas. (Introductory).	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.D.2.a .....	D-V.A .....	Major Stationary Sources.	Yes .....	51.165, Appx. S.IV.A .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made. 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.(i) through (iii) ...	D-V.A.1. through 3 ...	Major Stationary Sources.	Yes .....	51.165, Appx. S.IV.A. Conditions 1-4.	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
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 .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
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 .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
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 .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
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 .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.D.2.b .....	D-V.A.7 .....	Applicability of Certain Nonattainment Area Requirements.	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.D.2.b.(i) .....	D-V.A.7.a .....	Any major stationary source in a non-attainment area.	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
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) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
N/A .....	D-V.A.7.c .....	The following provisions apply to projects at existing emissions units * * * ("Reasonable possibility" provisions in nonattainment areas) (part of Applicability of Certain Nonattainment Area Requirements).	Yes, except as noted in comment section.	51.165(a)(6) .....	EPA is approving this provision, with the exception of the phrases "a Clean Unit or at," "a reasonable possibility that" and "may result in a significant emissions increase," which EPA considers as withdrawn by the State. See footnote 1, 5, and 6.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
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 approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
B-IV.D.2.c. (and subsections).	D-V.A.8 .....	Exemptions from Certain Nonattainment Area Requirements.	Yes .....	51.165, Appx. S.IV.B .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.

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 is incorporating all or part of revision or addition into the SIP	Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166	How provision is acted on in this action (if applicable see footnote)	How provision is acted on by EPA in a separate final action related to Colorado's interstate transport SIP (see proposed action at 76 FR 21835, April 19, 2011)
B-IV.D.3 .....	D-VI .....	Requirements Applicable to Attainment Areas. (Introductory).	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.D.3.a. (and subsections not listed below).	D-VI.A .....	Major Stationary Sources and Major Modifications.	Yes .....	51.166(j) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made. 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.(i)(C) .....	D-VI.A.1.c .....	For phased construction.	Yes .....	51.166(j)(4) .....	EPA is approving the language change for this definition. See footnote 1 and 2.	Partially approved * * * Only approved renumbering. NSR NFR will approve the language change.
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) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.D.3.a.(iii)(D) .....	D-VI.A.4 .....	Post-construction monitoring.	Yes .....	51.166(m)(2) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made. Colorado has revised this provision to make post construction monitoring at the director's discretion as allowed by 51.166(m)(2).
B-IV.D.3.b .....	D-VI.B .....	Applicability of Certain PSD Requirements.	Yes .....	NA .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
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) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
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) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
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) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made. Colorado has reworded D-VI.B.3. and deleted unnecessary language.
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) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.D.3.b.(iv) .....	D-VI.B.4 .....	The requirements of this Part D shall apply.	Yes .....	51.166(i)(6) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
N/A .....	D-VI.B.5 .....	The following provisions apply to projects at existing emissions units ("Reasonable possibility" provisions PSD) (part of Applicability of Certain PSD Requirements).	Yes, except as noted in comment section.	51.166(r)(6) .....	EPA is approving this provision, with the exception of the phrases "a Clean Unit or at," "a reasonable possibility that" and "may result in a significant emissions increase," which EPA considers as withdrawn by the State. See footnotes 1, 5, and 6.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.

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N/A .....	D-VI.B.6 .....	documents available for review upon request (part of Applicability of Certain PSD Requirements).	Yes .....	51.166(r)(7) .....	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
B-IV.D.3.b.(v) .....	D-VI.B.7 .....	A stationary source or modification may apply.	Yes .....	51.166(i)(9) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.D.3.c .....	D-VI.C .....	Notice to EPA .....	Yes .....	51.166(p)(1) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-IV.D.3.d .....	D-VI.D .....	Major Stationary Sources in attainment areas affecting nonattainment area.	Yes .....	51.165(b) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made
B-IV.D.4 .....	D-VII .....	Negligibly Reactive VOCs.	Yes .....	51.100(s) .....	Approved by interstate transport NFR. See next column.	The reference in D-VI.D. to "III.D.1. of Part B" is at B-IV.D.1. in the current codified SIP.
B-V .....	D-VIII .....	Area Classifications ...	Yes, with the exception of D-VIII.B.	51.166(e) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
N/A .....	D-VIII.B .....	All other areas of Colorado, * * * (part of Area Classifications).	No .....	NA .....	EPA considers this provision as withdrawn. See FR Notice of 3/25/98 (63 FR 14357).	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made. EPA is approving this provision with the exception of D-VIII.B.
B-VI .....	D-IX .....	Redesignation .....	Yes .....	51.166(e) .....	Approved by interstate transport NFR. See next column.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
B-VII .....	D-X .....	Air Quality Limitations	Yes, with the exception of D-X.A.5.	51.166(c) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
N/A .....	D-X.A.5 .....	Increment Consumption Restriction (part of Air Quality Limitations).	No .....	NA .....	EPA considers this provision as withdrawn. See FR Notice of 3/25/98 (63 FR 14357).	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made. EPA is approving this provision with the exception of D-X.A.5.
B-VIII .....	D-XI .....	Exclusions from Increment Consumption.	Yes .....	51.166(f) .....	Approved by interstate transport NFR. See next column.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
B-IX .....	D-XII .....	Innovative Control Technology.	Yes .....	51.166(s) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made.
B-X .....	D-XIII .....	Federal Class I Areas	Yes .....	51.166(p) .....	Approved by interstate transport NFR. See next column.	Fully approved * * * Because the provision has only been renumbered and no substantive changes were made. The reference in D-XIII.C. to "III.B. of Part B" is at B-IV.B. in the current codified SIP.

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B–XI .....	D–XIV .....	Visibility .....	No .....	NA .....	EPA previously acted on this provision in a separate action. See FR Notice of 11/2/06 (71 FR 64466).	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	A–I.B.13 .....	CEMS definition .....	Yes .....	51.166(b)(43), 51.165(a)(1)(xxxiv).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	A–I.B.14 .....	CERMS definition .....	Yes .....	51.166(b)(46), 51.165(a)(1)(xxxiv).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	A–I.B.15 .....	CPMS definition .....	Yes .....	51.166(b)(45), 51.165(a)(1)(xxxiii).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	A–I.B.33 .....	Pollution Prevention definition.	Yes .....	51.166(b)(38), 51.165(a)(1)(xxvi).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	A–I.B.36 .....	PEMS definition .....	Yes .....	51.166(b)(44), 51.165(a)(1)(xxxii).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
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).	EPA is approving this provision. See footnote 1.	Only approved the language in I.A.1.
N/A .....	D–I.B. (except I.B.3. and second sentence of I.B.4.).	Applicability Tests .....	Yes .....	51.166(a)(7)(iv)(c), (d), and (f), 51.165(a)(2)(ii)(C), (D), and (F).	EPA is approving this definition with the exception of I.B.3. and the second sentence of I.B.4, which EPA considers withdrawn. 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 footnotes 1 and 6.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice. 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.
N/A .....	D–I.B.3 .....	Emission tests at clean units (part of Applicability Tests).	No .....	51.166 (a)(7)(iv)(e), 51.165(a)(2)(ii)(E).	EPA considers this provision as withdrawn. See footnote 6.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D–I.B.4. second sentence.	For example, for a project involves both an existing unit and a clean unit (part of Applicability Tests).	No .....	51.166(a)(7)(iv)(f) second sentence, 51.165(a)(2)(ii)(F) second sentence.	EPA considers this language as withdrawn. See footnote 6.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice. EPA is not taking action on this part of provision D–I.B.4. at this time.

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N/A .....	D-I.C .....	For any major sta- tionary source re- questing, or oper- ating under, a Plantwide Applica- bility Limitation.	Yes .....	51.166 (a)(7)(v), 51.165(a)(2)(iii).	EPA is approving this provi- sion. See footnote 1.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.
N/A .....	D-I.D .....	An owner or operator undertaking a Pollu- tion Control Project.	No .....	51.166 (a)(7)(vi), 51.165(a)(2)(iv).	EPA considers this provi- sion as withdrawn. See footnote 6.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.2 .....	Actuals PAL Definition	Yes .....	51.166(w)(2)(i), 51.165(f)(2)(i).	EPA is approving this provi- sion. See footnote 1.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.4 .....	Baseline Actual Emis- sions definition.	Yes .....	51.166(b)(47), 51.165(a)(1)(xxxv).	EPA is approving this provi- sion. See footnote 1.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.7 .....	Begin Actual Con- struction definition.	Yes .....	51.166(b)(11), 51.165(a)(1)(xv).	EPA is approving this provi- sion. See footnote 1.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.9 .....	Clean Coal Tech- nology definition.	Yes .....	51.166(b)(33), 51.165(a)(1)(xxiii).	EPA is approving this provi- sion. See footnote 1.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.10 .....	Clean Coal Tech- nology Demonstra- tion Project defini- tion.	Yes .....	51.166(b)(34), 51.165(a)(1)(xxiv).	EPA is approving this provi- sion. See footnote 1.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.11 .....	Clean Unit definition ..	No .....	51.166(b)(41), 51.165(a)(1)(xxix).	EPA considers this provi- sion withdrawn by the State. See footnote 6.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.13 .....	Construction definition	Yes .....	51.166(b)(8), 51.165(a)(1)(xxviii).	EPA is approving this provi- sion. See footnote 1.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.14 .....	Emissions Unit defini- tion (for PSD/NSR purposes).	.....	51.166(b)(7), 51.165(a)(1)(vii).	EPA is approving this provi- sion. See footnote 1.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.15 .....	Electric Utility Steam Generating Unit definition.	Yes .....	51.166(b)(30), 51.165(a)(1)(xx).	EPA is approving this provi- sion. See footnote 1.	Not taking action * * * Be- cause it was not a nec- essary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for ap- proval in our Dec. 7, 2005 notice.

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N/A .....	D-II.A.17 .....	High Terrain definition	Yes .....	51.166(b)(25) .....	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.18 .....	Hydrocarbon Combustion Flare definition.	.....	51.166(b)(31)(iv), 51.165(a)(1)(xv)(D).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.20 .....	Low Terrain definition	Yes .....	51.166(b)(26) .....	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.22 .....	Major Emissions Unit definition.	Yes .....	51.166(w)(2)(iv), 51.165(f)(2)(iv).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.28 .....	Nonattainment New Source Review definition.	Yes .....	51.165(a)(1)(xxx) .....	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.29 .....	PAL Effective Date definition.	Yes .....	51.166(w)(2)(vi), 51.165(f)(2)(vi).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.30 .....	PAL Effective Period definition.	Yes .....	51.166(w)(2)(vii), 51.165(f)(2)(vii).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.31 .....	PAL Major Modification definition.	Yes .....	51.166(w)(2)(viii), 51.165(f)(2)(viii).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.32 .....	PAL Permit definition	Yes .....	51.166(w)(2)(ix), 51.165(f)(2)(ix).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.33 .....	PAL Pollutant definition.	Yes .....	51.166(w)(2)(x), 51.165(f)(2)(x).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.34 .....	Plantwide Applicability Limitation (PAL) definition.	Yes .....	51.166(w)(2)(v), 51.165(f)(2)(v).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.

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 is incorporating all or part of revision or addition into the SIP	Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166	How provision is acted on in this action (if applicable see footnote)	How provision is acted on by EPA in a separate final action related to Colorado's interstate transport SIP (see proposed action at 76 FR 21835, April 19, 2011)
NA .....	D-II.A.35 .....	Pollution Control Project definition.	No .....	51.166(b)(31), 51.165(a)(1)(xxv).	EPA considers this provision withdrawn by the State. See footnote 6.	Not taking action.
N/A .....	D-II.A.36 .....	Prevention of Significant Deterioration Permit definition.	Yes .....	51.166(b)(42), 51.165(a)(1)(xli).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.37 .....	Project definition .....	Yes .....	51.166(b)(51), 51.165(a)(1)(xxxix).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.38 .....	Projected Actual Emissions definition.	Yes .....	51.166(b)(40), 51.165(a)(1)(xxviii).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.39 .....	Reactivation of Very Clean Coal-Fired EUSGU definition.	Yes .....	51.166(b)(37) .....	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.40 .....	Regulated NSR Pollutant definition.	No, see comment .....	51.166(b)(49), 51.165(a)(1)(xxxvii).	Approved by interstate transport NFR. See next column.	Fully approved.
N/A .....	D-II.A.41 .....	Replacement Unit definition.	Yes .....	51.166(b)(32), 51.165(a)(1)(xxi).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.42 .....	Repowering definition	Yes .....	51.166(b)(36) .....	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.45 .....	Significant Emissions Increase definition.	Yes .....	51.166(b)(39), 51.165(a)(1)(xxvii).	Approved by interstate transport NFR. See next column.	Fully approved.
N/A .....	D-II.A.46 .....	Significant Emissions Unit definition.	Yes .....	51.166(w)(2)(xi), 51.165(f)(2)(xi).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.47 .....	Small Emissions Unit definition.	Yes .....	51.166(w)(2)(iii), 51.165(a)(1)(iii).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D-II.A.48 .....	Temporary Clean Coal Demonstration Project definition.	Yes .....	51.166(b)(35), 51.165(a)(1)(xxii).	EPA is approving this provision. See footnote 1.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.

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 is incorporating all or part of revision or addition into the SIP	Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166	How provision is acted on in this action (if applicable see footnote)	How provision is acted on by EPA in a separate final action related to Colorado's interstate transport SIP (see proposed action at 76 FR 21835, April 19, 2011)
N/A .....	D–XV .....	Clean Units .....	No .....	51.166(t) and (u), 51.165(c) and (d).	EPA considers this provision withdrawn by the State. See footnote 6.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D–XVI .....	Pollution Control Projects.	No .....	51.166(v), 51.165(e) .....	EPA considers this provision withdrawn by the State. See footnote 6.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice.
N/A .....	D–XVII .....	Plantwide Applicability Limitations.	Yes .....	51.166(w), 51.165(f) .....	EPA is approving this provision. 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–XVII.I.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.	Not taking action * * * Because it was not a necessary prerequisite for the action on the 8/1/07 submittal, or provision was not proposed for approval in our Dec. 7, 2005 notice. 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–XVII.I.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).

Footnote 1: We are approving 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 51.165 and 51.166 and contain no changes to the language that would affect the meaning of the rule.

Footnote 2: We are approving 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 affect 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 underlined, 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 is approving 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 was previously in the definition of Major Stationary Source (at A–I.B.58.a.):

*In the Denver Metro PM<sub>10</sub> nonattainment area, sulfur dioxide and nitrogen oxides shall be treated as PM<sub>10</sub> 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 has revised Regulation No. 3 to add this deleted language back into the definition of Major Stationary Source. As discussed in the proposal, EPA is therefore approving this part of the definition of Major Stationary Source into the SIP.

Footnote 5: EPA discussed with the Colorado Department of Public Health and Environment (CDPHE) on how it intended to implement provisions D–V.A.7 and D–VI.B.5. without the language regarding the "reasonable possibility" that a project "may result in a significant emissions increase" 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 Regulation No. 3 necessary 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(n)(6)." Therefore, consistent with the Notice of Proposed Rulemaking, EPA approves D–V.A.7.c and D–VI.B.5 with the exception of the phrases "a reasonable possibility that," "a Clean Unit or at," and "may result in a significant emissions increase." This approval is consistent with Colorado's deletion of the phrases in subsequent submittals.

Footnote 6: The Clean Unit and Pollution Control Projects provisions in the 2002 NSR Reform Rule were vacated by the United States Court of Appeals for the District of Columbia Circuit on June 24, 2005. Colorado has since removed references to these provisions in subsequent Reg. 3 submittals. As such, EPA considers these provisions effectively withdrawn by the State.

## II. Response to Comments

Environment Colorado and the Rocky Mountain Office of Environmental Defense jointly commented on our December 2005 proposed action. We have carefully considered the comments, and, as part of that consideration, have obtained information from the Colorado

Department of Public Health and Environment (CDPHE) in order to assist us in deciding how to address certain comments. Below we provide summaries of, and our responses to, the significant adverse comments. Nothing in them has caused us to change our action from what we proposed.

*Comment No. 1:* The commenters assert that "[t]he 2002 NSR Reform Rule provisions that were not vacated by the D.C. Circuit in *New York v. EPA* [citation omitted] allow previously-prohibited emissions-increases to occur." Comments at 4. In their main comment letter and in attached materials, the commenters argue that

Colorado's SIP revision will allow for increased air pollution, and they focus on three main aspects of Colorado's revised Regulation 3: (1) Revisions to the method of calculating baseline actual emissions for existing sources; (2) revisions to the applicability test for existing sources; and (3) the plantwide applicability limitation (PAL) provisions. The commenters assert that approval of Colorado's proposed SIP revision would violate section 110(l) of the CAA, because "EPA cannot make a finding that revising Colorado's permit provisions so that they track the non-vacated provisions of the 2002 rule 'would not interfere with attainment or other applicable requirements.'" Comments at 5.

*EPA Response No. 1:* Section 110(l) of the CAA states that "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this chapter." 42 U.S.C. 7410(l).

EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. Generally, a SIP revision may be approved under section 110(l) if EPA finds it will at least preserve status quo air quality. See *Kentucky Resources Council, Inc. v. EPA*, 467 F.3d 986 (6th Cir. 2006); *GHA SP v. EPA*, No. 06-61030 (5th Cir. Aug. 13, 2008); see also, e.g., 70 FR 53 (Jan. 3, 2005), 70 FR 28429 (May 18, 2005) (proposed and final rules, upheld in *Kentucky Resources*, which discuss EPA's interpretation of section 110(l)).

EPA has determined that Colorado's SIP revision will not "interfere with any applicable requirement concerning attainment and reasonable further progress \* \* \* or any other applicable requirement of [the CAA]" in violation of section 110(l) of the CAA because, as explained below, the revision will result in effects on air quality that are neutral or beneficial. The Colorado SIP revision tracks the Federal 2002 NSR Reform Rules that were not vacated by the Court of Appeals in *New York v. EPA*, 413 F.3d 3, 21-31 (D.C. Cir. 2005) (per curiam). Overall, EPA expects that changes in air quality as a result of implementing Colorado's rules will be consistent with EPA's analysis of the Federal 2002 NSR Reform Rules—that the effects will be somewhere between neutral and providing modest contribution to reasonable further progress when the 2002 NSR Reform Rules are compared to the pre-Reform provisions. EPA's analysis for the

environmental impacts of these three components of the 2002 NSR Reform Rules is informative of how Colorado's adoption of NSR Reform (based on the federal rules) will affect emissions. See generally Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules (Nov. 21, 2002) ("Supplemental Analysis").<sup>1</sup>

EPA's conclusion rests primarily on the national-scale analysis that EPA conducted in support of the 2002 NSR Reform Rules. This national analysis indicates that the non-vacated provisions of the NSR Reform Rules will have a neutral or beneficial impact. The three significant changes in the 2002 NSR Reform Rules (that were not vacated by the court) were: (1) Plantwide applicability limits (PALs); (2) the 2-in-10 baseline (also known as the ten-year lookback); and (3) the actual-to-projected actual emission test. EPA's Supplemental Analysis discussed each of these three changes individually, and addresses many of the issues raised by commenters.

The environmental impacts of NSR Reform in Colorado will not be substantially different from those discussed in the Supplemental Analysis. Furthermore, with limited exceptions discussed below, the commenters do not raise Colorado-specific arguments or provide Colorado-specific data to suggest that the results of the NSR Reform in Colorado will be substantially different from those discussed in the Supplemental Analysis. Where the commenters have relied on generic or national arguments against NSR Reform, we have relied on the analyses conducted in support of the 2002 NSR Reform rules for our response.

It is worth emphasizing that, while the comments focus exclusively on how Colorado's SIP revision may allow certain facilities to increase emissions without undergoing NSR, the NSR process does not prohibit emissions increases. Nor does it regulate facilities that simply increase their hours of operation or production rate over what has occurred in recent years, resulting in increased annual emissions. Rather, NSR regulates construction of new major sources, and of physical or operational changes at existing major sources that result in significant emissions increases, and requires the new source or modification to control its emissions using stringent technology-based standards, as well as

meet other requirements. In some cases (e.g., a modification at an already well-controlled unit) the benefits of the NSR program may be small. See Supplemental Analysis at 5. At the same time, avoidance of an NSR permitting process does not necessarily mean that emissions increase, since facilities may be discouraged by the permitting process itself from undertaking environmentally beneficial projects. See *id.* at 5. Finally, the NSR program can lead to changes in source behavior that have environmental effects (including potentially beneficial effects) even for sources that do not get an NSR permit, and permitting data tell us little about these effects. See *id.* at 5-6.

For these reasons, focusing entirely on hypothetical emissions increases that might avoid NSR misstates the overall effect of the NSR revisions that Colorado and other states have adopted. The question is not simply whether the SIP revision would theoretically allow certain sources to make emissions-increasing changes that might be subject to NSR under the current SIP but would not be subject to NSR in the revised SIP. Rather, the question is whether the SIP revision, as a whole, would interfere with applicable CAA requirements. Since the focus of this analysis is on the SIP as a whole, and since NSR Reform is expected to lead to overall emissions reductions even though emissions at some individual sources may increase, the commenters' arguments (arguing that certain individual sources' emissions may increase) do not show that the SIP revision as a whole would interfere with applicable CAA requirements. That said, we respond in detail below to the commenters' significant adverse comments regarding specific alleged emissions increases that would avoid NSR under Colorado's SIP revision.

#### 1. Baseline Actual Emissions.

The commenters argue that revisions to Regulation No. 3's method of calculating baseline actual emissions for existing sources will allow those sources to "inflate" baseline actual emissions, and thereby substantially increase emissions without undergoing NSR. Specifically, the commenters argue that (1) the rule's definition of baseline actual emissions enables facilities to choose the highest consecutive two-year period over the prior ten years, thus treating high emissions that may not have been emitted for many years as "baseline" emissions; (2) the regulation allows sources to select a different two-year period for each pollutant, thus creating a "baseline" that is higher than actual

<sup>1</sup> The Supplemental Analysis is available at <http://epa.gov/nsr/documents/nsr-analysis.pdf>, and has also been added to the docket for this action. It is incorporated into these responses by reference.

emissions of the facility in any actual two-year period over the last decade; and (3) the regulation calculation “rewards” facilities for malfunctions, upsets and unusual emissions during start-up and shut-downs by allowing facilities to inflate the baseline with those emissions. We disagree that these changes will result in substantial emissions increases, and discuss each in turn.

First, with regard to the 2-in-10 baseline, EPA concluded in the context of the NSR Reform regulation that “the environmental impact from the change in baseline \* \* \* will not result in any significant change in benefits derived from the NSR program.” Supplemental Analysis at 13. As we explained in the Supplemental Analysis, the rule change will not alter the baseline at all for many sources. See Supplemental Analysis at 13. Furthermore, for other instances, EPA explained:

[F]or the remaining case, where recent emissions are low compared to the past, a source cannot qualify for a significantly higher baseline emissions level if the present emissions are lower as a result of enforceable controls or other enforceable limitations that have gone into effect since that time—which is true an estimated 70 percent of the time. Indeed, such sources could face more stringent baselines under the current rule if controls are applied toward the end of the baseline period. This leaves only the case where emissions are lower as a result of decreased utilization due to decreased market demand, some kind of outage, or other circumstance. Even in this case, it is not clear that a different baseline would always result, because the source is eligible, under current rules, to request a more representative baseline than the previous two years.

*Id.* at 13. Additional information regarding the 2-in-10 baseline change is available in the Supplemental Analysis, Appendix F. See also 67 FR 80186, 80199–80200 (Dec. 31, 2002); *New York*, 413 F.3d at 21–31 (explaining why EPA’s selection of ten-year lookback period is reasonable).

The commenters also provided Colorado-specific emissions data to support their hypothesis that allowing a 2-in-10 baseline calculation could lead to significant emissions increases in Colorado. EPA has evaluated this analysis and concluded that the commenters overlooked other important factors involved with the baseline calculation and oversimplified interpretation of the baseline calculation changes. The commenters also failed to present any rationale that allowing a 2-in-10 baseline calculation will, in fact, cause actual emission increases in Colorado that would not occur absent the Reform rule. Applicability of NSR is

determined on a project-specific basis. Commenters have not explained why there should be reason to believe that more projects will actually occur, or that higher-emitting projects will actually occur, as a result of a 2-in-10 calculation, rather than the baseline calculation specified in pre-Reform NSR rules. Appendix F of the Supplemental Analysis provides a number of reasons why the majority of sources will not be affected by the change in baseline calculation. The following circumstances at particular sources would not result in a change in baseline: new sources and new units at existing sources, electric utility steam generating units, sources with recent high levels of emissions, and sources with recent emissions comparable to the past. The Supplemental Analysis explains that NSR Reform requires “use of current emission limits that account for enforceable pollution control measures that have been put into place.” Supplemental Analysis at F–4. While the commenters did remove electric utility steam generating units from their analysis, they did not evaluate the change in baseline calculation with respect to the other circumstances described above. In particular, they acknowledge that they did not evaluate other provisions of state and federal law that could limit pollution increases (comment 0020.21 in docket). In lieu of doing this evaluation for Colorado, the commenters cite an October 2003 report<sup>2</sup> that looked at the impact of non-NSR provisions in relation to the 2-in-10 baseline calculation in 12 states, of which Colorado was not one. EPA has previously noted that this report is “overly simplistic and erroneous in its interpretation of NSR.” 73 FR 76563 (Dec. 17, 2008).<sup>3</sup>

Furthermore, it is overly simplistic to assume that sources would be able to increase their emissions by simply relying on a higher baseline calculation that a 10-year lookback may (or may not) afford, for at least four reasons.

1. As mentioned above, there are several circumstances that the commenters overlooked, such as the existing rules’ provision to select an alternate representative baseline period, and enforceable controls or other enforceable limitations, that factor into the ability to take a higher baseline by

looking back 10 years as opposed to 2 years. With respect to the existing rules’ provision allowing for a source to request an alternate representative baseline period, CDPHE has informed EPA that, even under its current NSR rules, it has approved at least four requests for a more representative baseline other than the most recent two years.<sup>4</sup> The commenters did not take this into account when calculating the hypothetical emissions increases that might occur under the 2-in-10 baseline calculation.

2. The commenters have attempted to show that a 10-year lookback can yield a higher *facility-wide* baseline, but NSR applicability is determined for a particular project affecting particular emissions units. For existing emissions units, the source would likely use the actual-to-projected-actual applicability test, which compares projected actual emissions to the baseline actual emissions *for that emissions unit*. See Regulation No. 4, Part D, section I.B.1. The project’s overall NSR applicability is determined by summing this difference across all emissions units involved in the project. See *id.* The possibility that an emissions unit not involved in the project (i.e. not having an emissions increase from the project) might have a high baseline actual emissions is irrelevant in this context.

3. The prospect that the ten-year lookback might *allow* certain sources to use a higher baseline and therefore increase emissions (as compared to a two-year-lookback) does not mean that sources will actually do so. See *Natural Resources Defense Council v. Jackson*, 650 F.3d 662, 666 (7th Cir. 2011) (“The two-in-ten rule, for example, *might* allow a business to increase average emissions, but *does it*? So far, we have no answer to that question, either from actual experience in adopting states or through efforts to test a model by retrodiction.”) (emphases in original). As explained in depth in the Supplemental Analysis, EPA has concluded that any emissions increases made possible by the ten-year lookback will be balanced by emissions reductions elsewhere as part of the overall NSR Reform.

4. Any source modification that, because of the changes to the baseline calculation, would avoid major NSR would nevertheless be evaluated on a case-by-case basis under the minor source permitting program in Colorado that is in place to maintain or make

<sup>2</sup> Environmental Integrity Project and the Council of State Governments/Eastern Regional Conference, *Reform or Rollback? How EPA’s Changes to New Source Review Could Affect Air Pollution in 12 States*, October 2003.

<sup>3</sup> We incorporate by reference into this response a detailed critique of this report presented in EPA’s approval of Wisconsin’s NSR Reform SIP revision. See 73 FR 76560, 76563–64.

<sup>4</sup> Based on email communication from Roland C. Hea, CDPHE Permitting Section Supervisor, to EPA Region 8 dated November 18, 2011. A copy of the email has been added to the docket for this action.

progress towards attainment of the National Ambient Air Quality Standards (NAAQS). While it is true that Colorado's minor source permitting program does not require Best Available Control Technology (BACT), in actual practice Colorado has a track record of progress towards attainment of the NAAQS given that it currently attains all NAAQS except ozone.<sup>5</sup> Furthermore, within the ozone nonattainment area, the minor source permitting program in Colorado requires Reasonably Available Control Technology (RACT) for stationary sources. The commenters' failure to consider this RACT requirement in their analysis of the 2-in-10 baseline calculation contributes to an unrealistically inflated hypothetical emissions increase due to the revised baseline calculation.

With respect to the fact that a facility may select a different two-year baseline period for each pollutant, NSR applicability has long been evaluated on a pollutant-by-pollutant basis, and the NSR Reform rule did not change this. Whether a modification results in a net emissions increase exceeding significance thresholds is determined on a pollutant-by-pollutant basis, and BACT (or, where appropriate, Lowest Achievable Emission Rate (LAER)) is determined on a pollutant-by-pollutant basis. Different pollutants may be generated by different equipment or production processes within a facility. When comparing emissions from different years, it is not unusual for a facility to have a higher level of one pollutant than another in a given year, and then the reverse relationship in a subsequent year. In many such cases, the reason is simply that the facility operates several different processes (e.g., associated with several different products or operations) with different emissions characteristics, and, due to variations in product cycles, the facility runs different processes or production lines more in some years than others. Moreover, the facility may use entirely different control technologies to control different pollutants. It is therefore not unreasonable to calculate a facility's emissions increase and net emissions increase for a particular pollutant with respect to the baseline actual emissions for that pollutant, even if the variability of emissions of that pollutant differs from that of another pollutant emitted at the same facility. Moreover, the commenters have not provided any

specific data suggesting that allowing a facility to select its baseline period on a pollutant-by-pollutant basis, rather than requiring a facility to use a single two-year baseline period for all regulated NSR pollutants, will actually result in emissions increases in Colorado.

Finally, with respect to startup, shutdown, and malfunction, Regulation No. 3, in accordance with the federal regulation, defines "Projected Actual Emissions" as including "emissions associated with startups, shutdowns, and malfunctions." See Regulation No. 3, Part D, Paragraph II.A.36.b.(ii). Thus, startup, shutdown, and malfunction are included in both the calculation of both baseline actual emissions and projected actual emissions. With respect to the exclusion for "non-compliant emissions that occurred while the source was operating above any emission limitation," the application of this exclusion is straightforward. The calculation of baseline actual emissions cannot include periods of time when those emissions exceed an emissions limitation. Whether enforcement action has been taken is irrelevant for purposes of calculating the baseline actual emissions.

## 2. Revised Applicability Test

The commenters argue that the revised applicability test would allow existing sources to substantially increase emissions without undergoing NSR. Specifically, the commenters object to (1) extending the actual-to-projected-actual test to all sources, and (2) excluding emissions associated with increased demand (so long as the facility could have accommodated that growth before the modification).

We disagree that these changes will result in substantial emissions increases. The commenters provide no Colorado-specific information in support of these arguments, and consequently our response relies on the NSR Reform rulemaking record.

With regard to the actual-to-projected actual test, EPA concluded that "the environmental impacts of the switch to the actual-to-projected actual test are likely to be environmentally beneficial. However, as with the change to the baseline, the vast majority of sources, including new sources, new units, electric utility steam generating units, and units that actually increase emissions as a result of a change, will be unaffected by this change. Thus, the overall impacts of the NSR changes are likely to be environmentally beneficial, but only to a small extent." Supplemental Analysis at 14, Appendix G; see also 67 FR 80186, 80196.

With regard to the demand growth exclusion, the commenters' arguments have been addressed in the NSR Reform rulemaking. See 67 FR 80186, 80202–03; see also *New York*, 413 F.3d at 31–33.

## 3. Plantwide Applicability Limits

The commenters argue that the PAL provisions would allow existing sources to substantially increase emissions without undergoing NSR.

We disagree that the PAL provisions will result in substantial emissions increases. The commenters provide no Colorado-specific information in support of these arguments, only a Colorado-specific example to illustrate the non-controversial statement that potential-to-emit can be larger than actual emissions. (comment 0020.18 in docket). Consequently, our response relies on the NSR Reform rulemaking record.

The Supplemental Analysis explained that "EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits." Supplemental Analysis at 6. EPA further explained that:

Although it is impossible to predict how many and which sources will take PALs, and what actual reductions those sources will achieve for what pollutants, we believe that, on a nationwide basis, PALs are certain to lead to tens of thousands of tons of reductions of VOC from source categories where frequent operational changes are made, where these changes are time sensitive, and where there are opportunities for economical air pollution control measures. These reductions occur because of the incentives that the PAL creates to control existing and new units in order to provide room under the cap to make necessary operational changes over the life of the PAL.

Supplemental Analysis at 7. The Supplemental Analysis, and particularly Appendix B, provides additional details regarding EPA's analysis of PALs and anticipated associated emissions decreases. See also 67 FR 80186, 80214–22; *New York*, 413 F.3d at 36–38.

*Comment No. 2:* EPA's proposed approval contravenes the CAA's General Savings Clause set forth in section 193 of the Act.

*EPA Response No. 2:* EPA's response to the section 193 issues raised by the commenters involves many of the same elements of the response above to the section 110(l) comments, which is also incorporated by reference here. Section 193 states (in relevant part) that "[n]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area

<sup>5</sup> In the case of ozone, the State has attaining data in relation to the 1997 8-hour standard and has a recently approved attainment demonstration SIP for this standard. See the response to Comment No. 3 below for more information regarding the ozone attainment status in Colorado.

which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.” 42 U.S.C. 7515.

Assuming for purposes of this discussion that section 193 does apply to the instant action,<sup>6</sup> as discussed earlier in this notice, EPA has previously determined and explained in the Supplemental Analysis that implementation of the 2002 NSR Reform Rule provisions still in effect (that is, those not vacated by the DC Circuit) are expected to have at least a neutral environmental effect. EPA has no information indicating that findings associated with EPA's Supplemental Analysis would not apply in Colorado—that is, that Colorado's SIP revisions would not have at least a neutral (and possibly a modest beneficial) environmental effect.

Therefore, even if section 193 does apply to this action, EPA does not agree with the commenters' assertions that the SIP revisions approved in this action raise a section 193 concern. EPA is simply approving Colorado's SIP revisions that adopt rules equivalent to the federal rules, and, as discussed earlier in this notice, the Supplemental Analysis that EPA developed to support adoption of the federal rules suggests that the effects of the revised rules will be at least neutral. The Colorado SIP will continue to operate with the full suite of NSR-related elements, including a comprehensive minor source program.

*Comment No. 3:* EPA's proposed approval will interfere with the ozone attainment demonstration (with respect to the 1997 8-hour ozone standard) for the Denver Metro area and interfere with the Early Action Compact (EAC).

*EPA Response No. 3:* These comments are no longer relevant since much has changed regarding the EAC and Denver's ozone attainment status between now and when the EPA first proposed approval of NSR Reform for Colorado.

Denver failed to meet the requirements of the EAC and, as of November 2007, was designated nonattainment for the 1997 8-hour ozone standard. Since that time, EPA has approved a SIP revision (76 FR 47443) for the State of Colorado that includes an attainment demonstration by November 2010 for the Denver Metro Area. Ambient air monitoring data also supports the attainment demonstration,

with no ozone monitors in the Denver Metro Area showing a violation of the 1997 8-hour ozone standard using design values from 2007–2009 (82 ppb) or from 2008–2010 (78 ppb). Preliminary data from 2009–2011 also shows attainment with respect to the 1997 8-hour ozone standard.

*Comment No. 4:* Colorado is preparing to make substantial revisions to its Inspection & Maintenance (I/M) program that will further undermine the ozone attainment demonstration for the Denver Metro Area.

*EPA Response No. 4:* The comment is outside the scope of this action since EPA did not propose to take any action with respect to Colorado's I/M program. Furthermore, many aspects of the I/M program in the Denver Metro Area/North Front Range have changed since this comment was originally made. On September 25, 2006, the State of Colorado submitted a SIP submittal for the CAA section 175A(b) second 10-year carbon monoxide (CO) maintenance plans for the Denver metropolitan and Longmont areas. This SIP submittal also included revisions to Colorado's Regulation Number 11 which included the removal of the I/M program in both carbon monoxide maintenance areas. EPA approved these second 10-year maintenance plan SIP revisions on August 17, 2007 (see 72 FR 46148). However, in our August 17, 2007 action, we drew special attention to the point that the I/M program would continue in both areas for purposes of the ozone element of the SIP: “\* \* \* the removal of the I/M program from Denver's revised CO maintenance plan does not mean the I/M program is eliminated. The State relies on the I/M program in the Denver's 1-hour ozone maintenance plan and Denver's 8-hour ozone Early Action Compact (EAC). Therefore, the motor vehicle I/M program will remain intact in the Denver-metro area.” (72 FR 46155, August 17, 2007). We also note that we had previously approved Fort Collins' and Greeley's revised CO maintenance plans which also involved the removal of the Basic I/M program from the SIP for both areas (see 68 FR 43316, July 22, 2003 and 70 FR 48650, August 19, 2005, respectively). Those actions effectively eliminated Basic I/M in Larimer and Weld Counties; however, we note that those basic I/M programs had only been in place for purposes of CO emission reductions.

Colorado has submitted two other SIP revisions, after our August 17, 2007 **Federal Register** action, that involve amendments to Regulation Number 11. Those revisions involve a low emitter index (LEI) of vehicles with respect to the Clean Screen element of Regulation

Number 11 and to eliminate obsolete provisions for gasoline filter neck inspections and CFC (refrigerant) leak checks. The latter submittal has since been withdrawn by the State and we have not acted on the LEI submittal yet. However, we do note that since our most recent action to Federally approve revisions to Colorado's Regulation Number 11 (see 72 FR 46148, August 17, 2007), Colorado has reinstated the I/M programs in Larimer and Weld Counties for the purpose of reducing ozone precursor emissions. These I/M programs contain State-only enforceable provisions and the re-implementation of the I/M programs began on November 1, 2010. These State-only I/M expansion provisions for Larimer and Weld Counties appear in Colorado's Regulation Number 11, Motor Vehicle Emissions Inspection Program, 5 CCR 1001–13, current as State-adopted on January 20, 2011; State-effective on March 2, 2011. We note that EPA has approved an attainment demonstration of the 1997 8-hour ozone NAAQS for the Denver Metro Area/North Front Range (76 FR 47443, August 5, 2011) and this attainment demonstration included ozone precursor emission reductions from the continued implementation of Colorado's Federally-approved I/M program. Furthermore, as stated above, ambient data shows attaining monitors using design values from 2007–2009 (82 ppb) and from 2008–2010 (78 ppb). Preliminary data from 2009–2011 also shows attainment with respect to the 1997 8-hour ozone standard.

*Comment No. 5:* Title 1, Part C, Section 160 of the CAA states that air quality in national parks must be protected. It is contrary to this CAA section for EPA to approve a rule revision that would increase air pollution in Colorado's Class I areas. Section 110(l) is proof that such a SIP revision should not be approved.

*EPA Response No. 5:* EPA's response to the air quality in national parks issue raised by the commenters involves many of the same elements of the response above to the section 110(l) comments, which is also incorporated by reference here. EPA's national analysis in support of the 2002 NSR Reform Rules indicates that the non-vacated provisions of the NSR Reform Rules will have a neutral or beneficial impact.

The primary issue raised by the commenters was the impact of nitrogen deposition in Rocky Mountain National Park (RMNP) which resides fully within the boundaries of Colorado. The commenters incorporate by reference a September 1, 2004 petition to the

<sup>6</sup> Of course, section 193 does not apply at all outside the Denver Metropolitan Ozone Nonattainment Area.

Department of Interior (DOI) from Colorado Trout Unlimited and Environmental Defense. The petition asks DOI to “[c]all for the EPA and the State of Colorado to fulfill their legal responsibilities to lower NO<sub>x</sub> and Ammonia to protect human health, plants and ecosystems, and scenic vistas at Rocky Mountain National Park and to fully mitigate nitrogen deposition above the identified critical load.” Partly in response to this petition, a Memorandum of Understanding was signed by the National Park Service, EPA, and the CDPHE to form the RMNP Initiative. The agencies agreed to pursue a more in-depth review of the issues related to nitrogen deposition in RMNP and a course of action to address them. As a result, the Initiative formulated the “Nitrogen Deposition Reduction Contingency Plan” which was endorsed by the Colorado Air Quality Control Commission (AQCC) on June 17, 2010. The plan includes goals for reducing nitrogen deposition incrementally over 5 year periods with contingencies in place should these goals not be reached.

In addition to the contingency measures adopted by the multi-agency plan, it is expected that current and future ozone planning in Colorado should positively impact nitrogen deposition in RMNP. Reduction in ozone precursors (e.g. NO<sub>x</sub>) that result from the control measures adopted in Colorado’s recent federally approved ozone attainment demonstration SIP will also contribute to a reduction of nitrogen deposition in RMNP.

Furthermore, Colorado is subject to the Protection of Visibility requirements at 40 CFR part 51, subpart P, including the Reasonably Attributable Visibility Impairment (RAVI) requirements, the Regional Haze requirements, and the Grand Canyon Visibility Transport Commission requirements. Each of these programs requires Colorado to achieve a variety of emissions reductions aimed at protecting visibility in national parks and other Class I areas. In particular, EPA expects that Colorado’s SIP revision submission to meet the Regional Haze requirements, including both the Best Available Retrofit Technology (BART) controls and the long-term strategy for regional haze, will provide NO<sub>x</sub> reductions that will reduce the nitrogen deposition in RMNP.

### III. Final Action

EPA is approving 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. Several of the remaining revisions made by Colorado to Regulation No. 3 as adopted on April 16, 2004 by the Colorado AQCC are being acted on by EPA in a separate final action related to Colorado’s Interstate Transport SIP (see proposed action at 76 FR 21835, April 19, 2011).

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

Risks” (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 11, 2012*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 21, 2011.

**James B. Martin,**

*Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

## **PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

## **Subpart G—Colorado**

■ 2. Section 52.320 is amended by adding paragraph (c)(122) to read as follows:

### **§ 52.320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(122) The State of Colorado submitted revisions October 25, 2005 to Colorado's 5 CCR 1001–5 Regulation Number 3, Part A and Colorado's 5 CCR 1001–5 Regulation Number 3, Part D. The October 25, 2005 submittal included language changes and renumbering of Regulation Number 3. The incorporation by reference in ((i)(A) and (i)(B) reflects the renumbered sections and language changes as of the October 25, 2005 submittal.

(i) Incorporation by reference.

(A) 5 CCR 1001–5, Regulation 3, *Stationary Source Permitting and Air Contaminant Emission Notice Requirements*, Part A, *Concerning General Provisions Applicable to Reporting and Permitting*, adopted April 16, 2004 and effective June 30, 2004:

Section I, *Applicability*, Sections I.B, *Definitions*; I.B.7, *Allowable Emissions*; I.B.13, *Continuous Emissions Monitoring System (CEMS)*; I.B.14, *Continuous Emissions Rate Monitoring Systems (CERMS)*; I.B.15, *Continuous Parameter Monitoring System (CPMS)*; I.B.33, *Pollution Prevention*; I.B.35, *Potential to Emit*; I.B.36, *Predictive Emissions Monitoring System (PEMS)*; adopted April 16, 2004 and effective June 30, 2004.

(B) 5 CCR 1001–5, Regulation 3, *Stationary Source Permitting and Air Contaminant Emission Notice Requirements*, Part D, *Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration*, adopted April 16, 2004 and effective June 30, 2004:

(1) Section I, *Applicability*,

(i) I.A., *General Applicability*; I.A.2; I.A.3;

(ii) I.B, *Applicability Tests*; I.B.1; I.B.2; I.B.4 (except the final sentence beginning, “For example...”); I.B.5;

(iii) I.C;

(2) Section II, *Definitions*,

(i) II.A;

(ii) II.A; II.A.1, *Actual Emissions*;

II.A.1.a (only the language that appears as plain or italicized text); II.A.1.c (only the language that appears as plain text); II.A.1.d;

(iii) II.A.2, *Actuals PAL*;

(iv) II.A.4, *Baseline Actual Emissions*;

(v) II.A.7, *Begin Actual Construction*;

(vi) II.A.9, *Clean Coal Technology*;

(vii) II.A.10, *Clean Coal Technology Demonstration Project*;

(viii) II.A.13, *Construction*;

(ix) II.A.14, *Emissions Unit*;

(x) II.A.15, *Electric Utility Steam Generating Unit*;

(xi) II.A.17, *High Terrain*;

(xii) II.A.18, *Hydrocarbon Combustion Flare*;

(xiii) II.A.20, *Low Terrain*;

(xiv) II.A.21, *Lowest Achievable Emission Rate (LAER)*; II.A.21.b (only the language that appears as plain or italicized text);

(xv) II.A.22, *Major Emissions Unit*;

(xvi) II.A.23, *Major Modification* (only the language that appears as plain and italicized text); II.A.23.d.(iii);

II.A.23.d(x); II.A.23.d(xi); II.A.23.e;

(xvii) II.A.25, *Major Stationary Source*; II.A.25.b (only the language that appears as plain or italicized text);

(xviii) II.A.27, *Net Emissions Increase*;

II.A.27.a.(i) (only the language that appears as plain or italicized text); II.A.27.a.(ii); II.A.27.b; II.A.27.g.(iii) (only the language that appears as plain or italicized text); II.A.27.i;

(xix) II.A.28, *Nonattainment Major*

*New Source Review (NSR) Program*;

(xx) II.A.29, *PAL Effective Date*;

(xxi) II.A.30, *PAL Effective Period*;

(xxii) II.A.31, *PAL Major Modification*;

(xxiii) II.A.32, *PAL Permit*;

(xxiv) II.A.33, *PAL Pollutant*;

(xxv) II.A.34, *Plantwide Applicability*

*Limitation (PAL)*;

(xxvi) II.A.36, *Prevention of*

*Significant Deterioration (PSD) Permit*;

(xxvii) II.A.37, *Project*;

(xxviii) II.A.38, *Projected Actual*

*Emissions*;

(xxvix) II.A.39, *Reactivation of Very*

*Clean Coal-fired Electric Utility Steam*

*Generating Unit*;

(xxx) II.A.41, *Replacement Unit*;

(xxxi) II.A.42, *Repowering*;

(xxxii) II.A.43, *Secondary Emissions*;

(xxxiii) II.A.46, *Significant Emissions*

*Unit*;

(xxxiv) II.A.47, *Small Emissions Unit*;

(xxxv) II.A.48, *Temporary Clean Coal*

*Technology Demonstration Project*;

(3) Section V, *Requirements*

*Applicable to Nonattainment Areas*, V.A.7.c (except for the phrases, “a Clean Unit or at”, “a reasonable possibility

that”, and “may result in a significant emissions increase”); V.A.7.d;

(4) Section VI, *Requirements*

*applicable to attainment and unclassifiable areas and pollutants*

*implemented under section 110 of the Federal Act (Prevention of Significant*

*Deterioration Program)*, Sections

VI.A.1.c (only the language that appears as plain or italicized text); VI.B.5 (except for the phrases, “a Clean Unit or at”, “a reasonable possibility that”, and “may result in a significant emissions increase”); VI.B.6;

(5) Section XVII, *Actuals PALs*;

adopted April 16, 2004 and effective June 30, 2004.

[FR Doc. 2012–8349 Filed 4–9–12; 8:45 am]

## **BILLING CODE P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Federal Emergency Management Agency**

### **44 CFR Part 67**

[Docket ID FEMA–2012–0003]

### **Final Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** *Effective dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472,