Previous Port Access Route Studies

A port access route study was announced in the **Federal Register** on April 16, 1979 (44 FR 22543) and modified on January 31, 1980 (45 FR 7026) that studied the whole of Alaska's maritime coast. Notice of study results were published on December 14, 1981 (46 FR 61049). Only a portion of the current study area was included in the previous port access route study, as the previous study excluded all areas west of 170 degrees West longitude and also did not consider areas north of the Bering Strait.

Necessity for a New Port Access Route Study

The Coast Guard is always seeking ways to enhance the safety of life at sea. Since 2007's record minimum for summer sea ice cover in the Arctic, international attention has been focused on the region and its potential accessibility for shipping and natural resource exploration. One significant study released in April 2009 by the Arctic Council entitled "Arctic Marine Shipping Assessment" noted both the sparse nature of aids to navigation in the United States Arctic as well as the absence of vessel routing measures in the Bering Strait. According to the study, significant increases in shipping are not expected in the near term. However, the U.S. Coast Guard desires to begin its study process so that essential safeguards are in place in advance of any future shipping increase.

The Coast Guard has identified a potential safety enhancement by increasing predictability of vessel traffic patterns in this area with an established vessel routing system. When vessels follow predictable and charted routing measures such as a TSS, congestion may be reduced, and mariners may be better able to predict where vessel interactions may occur and act accordingly.

This study will assess whether the creation of a vessel routing system is advisable to increase the predictability of vessel movements, which may decrease the potential for collisions, oil spills, and other events that could threaten the marine environment.

There are numerous interested stakeholders with concerns regarding this region, and the U.S. Coast Guard is committed to ensuring that all viewpoints are obtained and considered prior to moving forward with any vessel routing measure implementation.

Timeline, Study Area, and Process of this PARS: The Seventeenth Coast Guard District will conduct this PARS. The study will begin immediately upon publication of this notice and should take at least 24 months to complete.

The study area is described as an area bounded by a line connecting the following geographic positions:

- 62°30′ N, 173°00′ W;
- 62°30′ N, 167°30′ W;
- 67°30′ N, 167°30′ W;
- 67°30′ N, 168°58′37″ W, thence following the Russian Federation/United States maritime boundary line to position
- 63°40′ N, 173°00′ W, thence to the first geographical position.

As part of this study, we will analyze vessel traffic density, agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register.** It is possible that the study may validate the status quo (no routing measures) and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

Possible Scope of the Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will help us identify any problems and appropriate solutions. The study may recommend that we—

○ Maintain current vessel routing measures, if any;

○ Establish a Traffic Separation Scheme (TSS);

○ Create one or more precautionary areas;

○ Create one or more inshore traffic zones;

○ Create deep-draft routes;

○ Establish area(s) to be avoided;

○ Establish, disestablish, or modify anchorage grounds;

○ Establish a Regulated Navigation Area (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water; and

○ Identify any other appropriate ships' routing measures to be used.

Questions

To help us conduct the port access route study, we request information that will help answer the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer and follow the instructions under "Public Participation and Request for Comments" above.

1. What navigational hazards do vessels operating in the study areas face? Please describe.
2. Are there strains on safe navigation in the Bering Strait, such as increasing traffic density? If so, please describe.
3. What are the benefits and drawbacks to establishing new routing measures? Please describe.
4. What impacts, both positive and negative, would new routing measures have on the study area?
5. What costs and benefits are associated with the potential study recommendations listed above? What measures do you think are most cost effective?

This document is issued under authority of 33 U.S.C. 1223(c) and 5 U.S.C. 552.

Dated: September 24, 2010.

Christopher C. Colvin,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2010–28115 Filed 11–5–10; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1027; FRL–9223–3]

Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revision to Definitions; Construction Permit Program; Regulation 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of Colorado on June 20, 2003 and April 12, 2004. The intended effect of this proposal is to approve those portions of the revisions to Colorado's Regulation 3 that place restrictions on increment consumption, add innovative control technology as an alternative to BACT requirements and make other changes as described in more detail below. In addition, EPA proposes to disapprove those portions of the rule revisions that EPA determined are inconsistent with the Clean Air Act (CAA), including provisions relating to pollution control projects. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before December 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–1027, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: komp.mark@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2007–1027. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *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: Mark Komp, Air Program, 1595 Wynkoop Street, Mailcode: 8P–AR, Denver, Colorado 80202–1129, (303) 312–6022, *komp.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Background of State's Submittals
III. EPA Analysis of State's Submittals
IV. Consideration of Section 110(l) of the CAA
V. Proposed Action
VI. Statutory and Executive Order Reviews

Definitions

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

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or Colorado mean the State of Colorado, unless the context indicates otherwise.

(v) The initials *APEN* mean or refer to Air Pollutant Emission Notice.

(vi) The initials *NSR* mean or refer to New Source Review, the initials *RACT* mean or refer to Reasonably Available Control Technology, and the initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

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

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

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

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

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

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

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

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

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

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

II. Background of State's Submittals

On June 20, 2003 and on April 12, 2004, the State of Colorado submitted formal revisions to its SIP that changed or deleted numerous definitions in Part A of the State's Regulation Number 3. Primarily, these were minor changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete or duplicative definitions. In addition to the clarifications, formatting and readability changes were made to the definition

section and a number of definitions were added or modified to reflect developments in Federal law. Also, in the April 12, 2004 submittal, the only revision to Parts A and B of Regulation 3 was a minor change to Part A, Section I.A regarding the availability of material incorporated by reference.

One modified definition was for non-road engines. In response to the 1990 CAA Amendments, Federal case law, and EPA's interpretation of the term, Colorado modified the definition of a non-road engine. The definition was also moved from the Air Pollutant Emission Notice (APEN) section of Regulation 3 (Part A, Section II) to the definition section (Part A, Section I). In addition, Colorado took steps to keep track of these sources by requiring a non-road engine rated at 1200 horsepower or greater to file a Colorado APEN. The filing of an APEN for non-road engines is stipulated by Colorado's SIP revisions to be a State-only requirement.

New definitions also included the definition of Pollution Control Projects at existing electric utility steam generating units and the use of Clean Coal Technology at these units. Colorado also revised its definitions of actual emissions and major modification to include special provisions governing physical or operational changes at electric utility steam generating units. These new definitions and revisions responded to changes in the Federal regulations arising out of the decision in the Wisconsin Electric Power Company ("WEPCO") case (*Wisconsin Electric Power Co.* v. *Reilly,* 893 F.2d 901 (7th Cir. 1990)). As a result of the WEPCO decision, EPA's NSR regulations were changed in 1992 and Colorado responded to the changes by adding these definitions to its Regulation 3.

Revisions were also submitted involving Part B of Colorado's Regulation 3. Part B describes the process air emission sources must go through to obtain a required construction permit prior to commencing operation. The State's submittals modified the exemptions from construction permitting, modified requirements for permit applicants, added restrictions on increment consumption, and added provisions regarding innovative control technology.

Colorado added language to its area classification section of Part B, Section V stating that within certain Class II areas in the State (for example, certain National Monuments that are not Class I areas), sulfur dioxide concentration increases over baseline concentrations are limited to the amount permitted in Class I areas as established under Section 163(b) of the Federal CAA. Such increases are not allowed if the Federal Land Manager determines and the State concurs that there would be an adverse impact on air quality from the sulfur dioxide concentration increase.

In Section III.D.1.c(iii), Colorado modified the exemption from construction permitting for stationary internal combustion engines. The State also limited to 75 percent the amount that a new major stationary source or major modification may consume of an applicable pollutant increment (Part B, Section VII.A.5). Sources may ask for a waiver from the limit.

Finally, the State added the ability for a pollution source to request from the State a waiver from Best Available Control Technology (BACT) requirements, if the source installed and the State approved a system of Innovative Control Technology (Part B, Section IX). The owner or operator of an emission source using this technology would receive the waiver under the condition that the source using the Innovative Control Technology agrees to achieve a level of continuous emissions reduction greater than or equivalent to BACT. The level of emission reduction must be achieved no later than four years from time of startup. At no time may the technology cause any violation of an applicable NAAQS.

III. EPA Analysis of State's Submittals

We have evaluated Colorado's June 20, 2003 and April 12, 2004 submittals regarding revisions to the State's Regulation 3, Parts A and B. We propose to approve most of the revisions but also propose to disapprove certain revisions within the June 20, 2003 submittal.

What EPA Is Proposing To Disapprove

The State revised the definition of nonroad engine (Part A Section I.B.40). The revised definition of "nonroad engine" includes State-only requirements. As noted above, Colorado designated various parts of Regulation Number 3 State Only. In Section I.B.40.c., the State said this section is designated State Only and, therefore, not Federally enforceable.

Our interpretation is that provisions designated State Only have not been submitted to us for approval since one of the key purposes of a SIP approval is to make the submitted regulations Federally enforceable. Instead, we interpret these provisions to have been submitted for informational purposes. Hence, we are not proposing to act on the portions of Regulation Number 3 designated State Only and do not discuss them further unless they impact the portions of the regulation that Colorado intended to be Federally enforceable.

The State added terms and definitions (Section I.B.70) including for a "pollution control project" (I.B.70.d) in response to EPA's 1992 WEPCO rule. Under the definition of "modification" (I.B.36), the State also added provisions related to these definitions, including for pollution control projects (I.B.36.b(iii)(G)). On June 24, 2005, the Court of Appeals for the DC Circuit vacated the Pollution Control Project portion of the WEPCO rule as well as the corresponding portion of EPA's 2002 NSR rule (*State of New York et. al.* v. *EPA,* 413 F3d3 (DC Cir. 2005)). Therefore, EPA proposes to disapprove Part A, Sections I.B.36.b(iii)(G)and I.B.70.d in Regulation 3.

EPA also proposes to disapprove the new provisions in Part A, Section IV.C. regarding emissions trading under permit caps. These new provisions apply to both construction permits and to CAA Title V operating permits. For operating permits, the provisions should not be incorporated into the Federally enforceable version of the Colorado SIP. Instead, they should be submitted separately under 40 CFR 70.4(i) as a revision of Colorado's approved operating permit program. To the extent that these new provisions apply to Prevention of Significant Deterioration (PSD) or nonattainment NSR for major sources or major modifications, they are not allowed by the regulations in 40 CFR 51.166 or 51.165. EPA provides a mechanism for establishing permit caps through plant wide applicability limitations (PALs). The provisions in IV.C for emissions trading under permit caps do not meet the requirements for PALs in 40 CFR 51.165(f) and 51.166(w). Therefore, EPA is proposing to disapprove the provisions for emissions trading under permit caps set forth in Section IV.C.

In Part A Section V.F.5, Colorado expanded the acronym Lowest Achievable Emission Rate (LAER) as one instance of a regulation-wide style change that expanded many acronyms. The revision apparently inadvertently deleted the requirement that trading transactions may not be used inconsistently with or to circumvent requirements of LAER. EPA proposes to disapprove this change because emissions trading must be consistent with other requirements of the CAA, including LAER.

Turning to Part B of Regulation 3, in Section III.D.1.c(iii), the State modified the requirements for stationary internal combustion engines to be exempt from construction permitting. Previously, all such engines were exempt if they had

actual emissions of less than five tons per year or were rated less than fifty horsepower. Under the revision, in attainment areas such engines are exempt if they have uncontrolled actual emissions of less than ten tons per year or are rated less than one hundred horsepower; thus, more engines may be exempt from construction permitting under the revision. Under section 110(l) of the CAA, EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress, as define in Section 171 of the CAA, or any other applicable requirement of the CAA. The State did not provide a demonstration or other analysis that the expansion of the exemption satisfies the requirements of section 110(l). EPA believes that exempting a potentially greater number of stationary engines from construction permitting may result in increased emissions of criteria pollutants such as NOx. EPA therefore proposes to disapprove the revision to Section III.D.I.c(iii).

Finally in Part B, Section IV.B.2 and Section IV.H.8 regarding operating and maintenance plans and recordkeeping formats, the revisions to these provisions have the effect of exempting a source's operating and maintenance plan for control equipment and recordkeeping format from public comment. This is contrary to the public participation requirements of 40 CFR 51.161(a), which require the State to allow public comment on information submitted by owners and operators. As set out in 40 CFR 51.160(c) and (a), the submitted information subject to public comment must include information on operation of the source as necessary for the State to determine that the construction or modification of the source will not violate the applicable portions of the control strategy or interfere with attainment or maintenance of a national standard. As the exempted information appears to fall within this requirement, EPA proposes to disapprove this revision.

What EPA Is Proposing To Approve

The State added language to its definition of actual emissions (Section I.B.1.d) for electric utility steam generating units. The State defined actual emissions by allowing the actual emissions from the unit following a physical or operational change of the unit to equal the actual annual emissions of the unit provided the operator can provide information from a five year period showing no emission increase resulting from the unit's physical or operational change. This revised definition is consistent with EPA's 1992 WEPCO rule discussed earlier in this proposed rule. Although a term used ("representative actual annual emissions") is that of the WEPCO rule, the substance of the revised definition is also consistent with current Federal regulations I 40 CFR 51.165 and 51.166, and EPA, therefore, proposes to approve the revised definition.

The State also modified its definition for commenced construction in Section I.B.13 by excluding certain construction activities from the requirement for a permit. Planning activities, site clearing and grading, ordering equipment and materials, storing of equipment, constructing personnel trailers, engineering and design changes, and geotechnical investigation do not require that a permit be issued prior to these activities. EPA proposes to approve this change in the definition of commenced construction as it is consistent with EPA guidance interpreting the equivalent term, "begin actual construction". (*See* Memorandum, "Construction Activities Prior to Issuance of a PSD Permit with Respect to 'Begin Actual Construction' " from Edward E. Reich (March 28, 1986)). As noted in that guidance, though, such activity, if undertaken prior to issuance of a permit, is at the risk of the owner or operator and would not guarantee that the permit would be forthcoming.

The revisions to Regulation 3 excluded the consideration of clean coal technology demonstration projects as a major modification when the projects do not result in an increase in the potential to emit any regulated pollutant. EPA is proposing to approve this revision since the revision is consistent with the Federal NSR regulations described at 40 CFR 51.165 and 51.166.

Earlier in this proposed rule EPA stated that we were disapproving Pollution Control Projects as defined in Section I.B.70.d of Colorado's Regulation 3. However, the remainder of the revised definitions within Part A, Section I.B.70 is consistent with EPA's 1992 WEPCO rule and with current Federal NSR regulations. These definitions include clean coal technology, electric utility steam generating unit, reactivation of very clean coal-fired electric utility steam generating unit, repowering, representative actual annual emissions, temporary clean coal technology demonstration project and wet screening operations. EPA is proposing to approve this revision since the revision is consistent with the Federal NSR regulations.

Colorado revised its fee schedule in Part A, Section VI.D by eliminating the dollar amount of the annual fee and referring the fee applicant to provisions provided in Colorado's Revised Statutes Section 25–7–114.7. Colorado also revised the filing of claims regarding confidential information and how the State elevates such claims (Part A, Section VII.). EPA believes these revisions are consistent with the requirements of the Act and therefore proposes to approve them.

Construction permit review requirements regarding reasonable available control technology (RACT) for minor sources in attainment/maintenance areas were added in Part B, Section IV.D.3.e. These requirements mirror the existing requirements in Section IV.D.2.d for minor sources in nonattainment areas. This revision strengthens the SIP by extending RACT requirements to attainment and maintenance areas and EPA therefore proposes to approve them.

As noted in Section II of this proposed rule, in Part B, Section V of Colorado's Regulation 3, the State made the restrictions on maximum allowable increases of sulfur dioxide concentrations over baseline concentrations in Class I areas also applicable to certain Class II areas, such as certain National Monuments that are not Class I areas. This change strengthens the SIP by making the more stringent Class I restrictions also applicable in the listed Class II areas and EPA therefore proposes to approve the revision.

Increment consumption restrictions were also added to Part B of Colorado's Regulation 3. In Section VIII.A.5 it specifies that no new major stationary source or major modification shall individually consume more than 75 percent of an applicable increment. These new provisions apply to PSD for major sources or major modifications EPA is proposing to approve this revision as the revision is more stringent than Federal requirements regarding increment consumption.

Finally, the State added Part B, Section IX regarding the use of innovative control technology. Major stationary sources may request from the State a waiver from BACT requirements if a system of innovative control technology is provided by the source and approved by the State. EPA is proposing to approve this revision since the revision is consistent with the Federal NSR regulations described at 40 CFR 51.166(b)(19).

IV. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. The Colorado SIP revisions being approved that are the subject of this document do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. In regard to the June 20, 2003, and April 12, 2004 submittals, EPA proposes to approve several revisions to the State's Regulation Number 3. These portions do not relax the stringency of the Colorado SIP and in some cases strengthen it. In the case of innovative control technology, an air emission source may only use it as long as the technology provides for a level of continuous emission reduction greater than or equivalent to BACT. In the one instance in which a revised provision appears to relax the stringency of the SIP (Part B, Section III.D.1.c(iii)), EPA proposes to disapprove the revised provision. Therefore, the portions of the revisions proposed for approval satisfy section 110(l) requirements because they do not relax existing SIP requirements.

V. Proposed Action

For the reasons expressed above, we propose to approve Parts A and B of Regulation 3 as submitted on June 20, 2003 and April 12, 2004 with the following exceptions. EPA proposes to disapprove portions of Part A in Sections I.B.36(b)(iii)(G) and I.B.70(d) relating to pollution control projects due to the decision of the DC Circuit Court of Appeals, and to not act on the portion in Section I.B.40.c providing State-only requirements for nonroad engines, as we regard that portion to not be part of the submittal. EPA also proposes to disapprove the addition of Part A, Section IV.D. regarding emissions trading under permit caps. The revision to Part A, Section V.F.5 is proposed for disapproval because it inadvertently removes the provision for LAER. Furthermore, EPA proposes to disapprove the revision to the construction permit exemption in Part B, Section III.D.1.c(iii), as it does not appear to satisfy the criteria of section 110(l) of the CAA. Finally, EPA proposes to disapprove revisions to Part B, Section IV.B2 and Section IV.H.8 because the revisions prevent public comment on operating and maintenance plans and recordkeeping formats.

The State added language to its definition of actual emissions (Section I.B.1.d) for electric utility steam generating units. EPA proposes to approve the revised definition. The State also modified its definition for commenced construction in Section I.B.13 by excluding certain construction activities from the requirement for a permit. EPA proposes to approve this change in the definition of commenced construction as it is consistent with EPA guidance. The revisions to Regulation 3 excluded the consideration of clean coal technology demonstration projects as a major modification when the projects do not result in an increase in the potential to emit of any regulated pollutant. EPA is proposing to approve this revision since the revision is consistent with the Federal NSR regulations. Revised definitions within Part A, Section I.B.70, with the exception of the definition of a Pollution Control Project are consistent with EPA's 1992 WEPCO rule and with current Federal NSR regulations. EPA is proposing to approve these revised definitions since they are consistent with the Federal NSR regulations. Colorado revised its fee schedule in Part A, Section VI.D by eliminating the dollar amount of the annual fee and referring the fee applicant to provisions provided in Colorado's Revised Statutes Section 25–7–114.7. EPA believes this revision is consistent with the requirements of the Act and therefore proposes to approve the revision. In Part B, Section V of Colorado's Regulation 3, the State made the restrictions on maximum allowable increases of sulfur dioxide concentrations over baseline concentrations in Class I areas also applicable to certain Class II areas, such as certain National Monuments that are not Class I areas. Increment consumption restrictions were also added to Part B, Section VIII.A.5 of Colorado's Regulation 3. EPA proposes to approve these revisions.

The State added Part B, Section IX regarding the use of innovative control technology. Major stationary sources may request from the State a waiver from BACT requirements if a system of innovative control technology is provided by the source and approved by the State. EPA is proposing to approve this revision since the revision is consistent with the Federal NSR regulations. The remaining revisions in Part A and B of Regulation 3 submitted on June 20, 2003 and April 12, 2004 involve editorial and grammatical changes and are consistent with EPA's interpretations of the Act. We propose to approve these revisions.

VI. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

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: October 29, 2010.

Judith Wong,

Acting Deputy Regional Administrator, Region 8.

[FR Doc. 2010–28133 Filed 11–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86, 1033, 1039, 1042, 1045, 1054, and 1065

[EPA–HQ–OAR–2010–0142; FRL–9220–7]

RIN 2060–AO69

Revisions To In-Use Testing for Heavy-Duty Diesel Engines and Vehicles; Emissions Measurement and Instrumentation; Not-to-Exceed Emission Standards; and Technical Amendments for Off-Highway Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This NPRM proposes to make several revisions to EPA's mobile source emission programs and test procedures. EPA believes that each of these is minor and non-controversial in nature. Most of the proposed changes arise from the results of the collaborative test program and related technical work we conducted for the highway heavy-duty diesel in-use testing program. Most noteworthy here is the proposal to adopt a particulate matter measurement allowance for use with portable emission measurement systems. Related to this are two provisions to align the in-use program timing requirements with completion of the program as required in current regulations and the incorporation of revisions to a few technical requirements in the testing regulations based on information learned in this and one other test program. Finally, the NPRM proposes to modify a few transitional flexibilities for locomotive, recreational marine, and Tier 4 nonroad engines and incorporates a handful of minor corrections.

DATES: Written comments must be received by December 8, 2010. Request for a public hearing must be received by November 23, 2010. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0142, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include two copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA Headquarters Library, EPA West Building, Room: 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0142. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/oar/dockets.html.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Building, EPA Headquarters Library, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Rich Wilcox, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4390; fax number: (734) 214–4050; email address: *laroo.chris@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

In the "Rules and Regulations" section of this **Federal Register**, we are making these revisions as a direct final rule without prior proposal because we view these revisions as noncontroversial and anticipate no adverse comment.

The regulatory text for this proposed rule is included in the direct final rule and parties should review that rule for the regulatory text. If we receive no