

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2007-0649; FRL-9290-2]

#### Approval and Promulgation of State Implementation Plans; State of Colorado Regulation Number 3: Revisions to the Air Pollutant Emission Notice Requirements and Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions regarding the Air Pollutant Emission Notice (APEN) regulations submitted by the State of Colorado on September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006 and August 1, 2007. The APEN provisions in Sections II.A. through II.D., Part A of Colorado's Regulation Number 3, specify the APEN filing requirements for stationary sources and exemptions from such requirements. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This final rule is effective November 2, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2007-0649. 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:** Crystal Freeman, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6602, [freeman.crystal@epa.gov](mailto:freeman.crystal@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### 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.

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##### I. Background

The State of Colorado submitted formal revisions to their SIP between 1997 and 2007 with Governor's letters dated as follows: September 16, 1997; June 20, 2003; July 11, 2005; August 8, 2006; and August 1, 2007. These submittals included revisions to the Colorado APEN provisions in Regulation Number 3, Part A, Sections II.A. through II.D. The Colorado APEN provisions in Regulation Number 3, Part A, Sections II.A. through II.C., specify requirements for stationary sources (major and minor) to file emission notices. These notices provide information such as the location where a source's emissions will occur, the nature of the source or of the activity generating the expected emissions, and an estimate of the emissions' quantity and composition. The Colorado APEN provisions in Regulation Number 3, Part A, Section II.D. exempt specific categories of sources from APEN requirements.

EPA's last final rulemaking action addressing revisions to Colorado's APEN provisions was published January 21, 1997 (62 FR 2910). The final rule today addresses the APEN SIP revisions discussed above. EPA's final rule action on the revisions submitted by the State does not trace the APEN provision changes through each of the submissions noted above. For reasons of efficiency and clarity, EPA compared the language of each APEN provision as submitted by the State on August 1,

2007 with the EPA-approved text of the same APEN provision in the 1997 Colorado SIP. These changes are detailed in the technical support document available in the docket for this action. In Table 1 of Section IV. below, EPA provides the approvals, disapprovals and no actions being taken for each provision number as of the August 1, 2007 submittal. The reasons for EPA's final action are discussed in our notice proposing action on these revisions and in the associated technical support document. (76 FR 4271 (Jan. 25, 2011)). Through this approach to the cumulative revisions, EPA is taking final action on all APEN revisions—with certain exceptions noted below—as submitted by the State of Colorado on September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006, and August 1, 2007.

##### II. Response to Comments

EPA did not receive comments on our January 25, 2011 **Federal Register** proposed action regarding the partial approval and partial disapproval of Colorado's SIP revisions to their Regulation Number 3, Part A, Sections II.A. through II.D.

##### III. Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. Those portions of the revisions to Colorado's Regulation Number 3, Part A, Sections II.A. through II.D. that we are approving satisfy section 110(l), because those portions do not relax existing SIP requirements. Instead, the revisions that EPA is approving increase stringency of existing provisions, clarify existing provisions, or remove obsolete provisions. Therefore, section 110(l) is satisfied for the provisions that EPA is approving. However, EPA is disapproving some exemptions in part because those provisions relax existing SIP requirements. (See 76 FR 4271.) Because EPA is disapproving those provisions, section 110(l) is satisfied.

##### IV. Final Action

EPA is partially approving and partially disapproving the Colorado SIP revisions for APEN requirements and exemptions submitted by the State on September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006, and August 1, 2007. As noted above, EPA's evaluation of the revisions submitted by the State

does not track the APEN provision changes through each of the submissions, but instead, for each provision, compared the textual changes between the EPA-approved Colorado APEN provisions effective February 21, 1997, and the Colorado-adopted APEN provisions included with the August 1, 2007 submittal. Below is a comprehensive summary of EPA's final action—approval, disapproval or no action—for each of the Colorado APEN provisions in Regulation Number 3, Part A, Section II. The APEN provision numbers are as codified in the August 1, 2007 submission.

In addition to Table 1 below, EPA is approving revisions to the following provisions in Regulation Number 3, Part A, Section II: (1) Deletion of provisions II.B.8., II.B.10., and II.D.4.b.; and (2) renumbering of APEN requirements, the

entirety of the language and their new location in Section I.B. The provision references, before the renumbering, were: II.B.5. and II.B.9. The references, after the renumbering, are, respectively, I.B.43 and I.B.16.

EPA is disapproving revisions to the following provisions in Regulation Number 3, Part A, Section II, which can also be found in Table 1 below: (1) A revision to II.D.1.q., regarding the APEN exemption for open burning activities;<sup>1</sup> (2) new exemption II.D.1.sss. and its subprovisions, which would exempt three tiers of stationary internal combustion engines from APEN requirements; (3) new exemption II.D.1.ttt. and its subprovisions, which would exempt three tiers of emergency power generators from APEN requirements; (4) new exemption II.D.1.xxx., which exempts deaerator/

vacuum pump exhausts; and (5) new exemption II.D.1.fff., applicable to Air Curtain Destructors.

EPA is taking no action on the following provisions, also found in Table 1 below, in Regulation Number 3, Part A, Section II: (1) II.D.1.m; II.D.1.ee; II.D.1.uu; II.D.1.ddd; and II.D.1.eeee., because EPA already proposed approval of the repeal of these exemptions in a separate action published on July 21, 2010 (75 FR 42346); and (2) the revision to APEN exemption II.D.1.uuu., because we proposed approval of the revision in the same July 21, 2010 proposal. The remaining provisions listed in the “No Action” section of the table were not revised by the State in any of the submittals that are the subject of this action.

TABLE 1—LIST OF COLORADO APEN PROVISIONS (REQUIREMENTS AND EXEMPTION IN SECTIONS II.A THROUGH II.D OF PART A, REGULATION NUMBER 3) BY EPA—FINAL RULE

EPA's final rule	APEN provision number in August 1, 2007 submission
Approval .....	II.A; II.B.1; II.B.1.b; II.B.2; II.B.3; II.B.3.a; II.B.4.a. through II.B.4.f; II.B.5; II.B.6 <sup>2</sup> ; II.C., II.C.1, II.C.1.a; II.C.1.h; II.C.2; II.C.2.b; II.C.2.b.(i) through II.C.2.b.(iv); II.C.3; II.C.3.a through II.C.3.d; II.D; II.D.1; II.D.1.a; II.D.1.f through II.D.1.i; II.D.1.j; II.D.1.k; II.D.1.n; II.D.1.x; II.D.1.y; II.D.1.aa; II.D.1.bb; II.D.1.kk; II.D.1.nn; II.D.1.oo; II.D.1.aaa; II.D.1.bbb; II.D.1.ccc; II.D.1.fff; II.D.1.ggg; II.D.1.lli; II.D.1.nnn. through II.D.1.rrr; II.D.1.vvv; II.D.1.www; II.D.1.yyy through II.D.1.ddd; II.D.2 through II.D.6.
Disapproval .....	II.D.1.q; II.D.1.sss; II.D.1.sss(i); II.D.1.sss(ii); II.D.1.sss(iii); II.D.1.ttt; II.D.1.ttt(i); II.D.1.ttt(ii); II.D.1.ttt(iii); II.D.1.xxx; II.D.1.fff.
No Action .....	II.B; II.B.1.a; II.B.3.b; II.B.4; II.C.1.b. through II.C.1.g; II.C.2.a; II.D.1.b. through II.D.1.e; II.D.1.i.(i). through II.D.1.i.(iii); II.D.1.l; II.D.1.m; II.D.1.o; II.D.1.p; II.D.1.r. through II.D.1.w; II.D.1.z; II.D.1.cc; II.D.1.dd; II.D.1.ee; II.D.1.ff. through II.D.1.jj; II.D.1.ll; II.D.1.mm; II.D.1.pp. through II.D.1.tt; II.D.1.uu; II.D.1.vv. through II.D.1.zz; II.D.1.ddd; II.D.1.eee; II.D.1.hhh. through II.D.1.kkk; II.D.1.mmm; II.D.1.uuu; II.D.1.eeee.

<sup>2</sup>For provisions II.B.5. and II.B.6., we are approving the renumbering.

## V. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

<sup>1</sup> The revision changes the reference from Regulation Number 1 to Regulation Number 9, which is enforceable only by the State.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 24, 2011.

**Carol Rushin,**

*Deputy 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 paragraphs (c)(72)(i)(F) and (c)(119) to read as follows:

#### § 52.320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(72) \* \* \*

(i) \* \* \*

(F) Previously approved in paragraph (c)(72)(i)(D) under Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5. These sections are now deleted without replacement: II.B.7., II.B.8., II.B.9., II.B.10., and II.D.7, effective October 30, 2006.

\* \* \* \* \*

(119) The State of Colorado submitted revisions on September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006 and August 1, 2007 to Colorado's 5 CCR 1001–5 Regulation Number 3, Part A, Section II. The August 1, 2007 submittal included a renumbering of sections in II.B and II.D. The incorporation by reference in (c)(119)(i)(A) reflects the renumbered provisions as of the August 1, 2007 submittal. Additionally, the State of Colorado deleted sections II.B.7., II.B.8., II.B.9., II.B.10., and II.D.7. without replacement. The deletion of these provisions has been incorporated by reference at (c)(72)(i)(F) of this section, the paragraph containing the original incorporation by reference of the provisions.

(i) Incorporation by reference.

(A) 5 CCR 1001–5, Regulation 3, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements*, Part A, *Concerning General Provisions Applicable to Reporting and Permitting*, Section II, *Air Pollutant Emission Notice (APEN) Requirements*, Sections II.A, *Air Pollutant Emission Notices for New, Modified, and Existing Sources*; II. B, *General*; II.B.1, *Emission Estimate*; II.B.1.b, *Other engineering calculations*; II.B.2, *Air Pollutant Emission Notice Term*; II.B.3, *APEN Applicability*; II.B.3.a, *Criteria Pollutants*; II.B.4.a; II.B.4.b; II.B.4.c; II.B.4.d; II.B.4.e; II.B.4.f; the undesignated text immediately following II.B.4.f and preceding II.B.5; II.B.5; II.B.6; II.C, *Revised Air Pollutant Emission Notices*; II.C.1; II.C.1.a; II.C.1.h; II.C.2; II.C.2.b; II.C.3; II.D, *Exemptions from Air Pollutant Emission Notice Requirements*; II.D.1; the undesignated text immediately following II.D.1 and preceding II.D.1.a; II.D.1.a; II.D.1.f; II.D.1.g; II.D.1.h; II.D.1.i (excluding subprovisions); II.D.1.j; II.D.1.k; II.D.1.n; II.D.1.x; II.D.1.y; II.D.1.aa; II.D.1.bb; II.D.1.kk; II.D.1.nn; II.D.1.oo; II.D.1.aaa; II.D.1.bbb; II.D.1.ccc; II.D.1.fff; II.D.1.ggg; II.D.1.ddd; the undesignated text immediately following II.D.1.ddd and preceding II.D.1.mmm; II.D.1.nnn., II.D.1.ooo; II.D.1.ppp; II.D.1.qqq; II.D.1.rrr; II.D.1.vvv; II.D.1.www; II.D.1.yyy; II.D.1.zzz; II.D.1.aaaa; II.D.1.bbbb; II.D.1.cccc; II.D.1.dddd; II.D.2; II.D.3; II.D.4; II.D.5; II.D.6; effective October 30, 2006.

■ 3. Add paragraph (e) to § 52.329 as follows:

#### § 52.329 Rules and regulations.

\* \* \* \* \*

(e) The State of Colorado submitted revisions on September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006 and August 1, 2007 to Colorado's 5 CCR 1001–5 Regulation Number 3, Part A, Section II. One of the revisions deleted two provisions from Section II and moved them to Section I of Regulation Number 3, Part A. The revised regulatory provisions read as follows:

(1) 5 CCR 1001–5, Regulation 3, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements*, Part A, *Concerning General Provisions Applicable to Reporting and Permitting*, Section I, *Applicability*, Section I.B.16, *Criteria Pollutants*; effective June 30, 2004:

(i) Those pollutants for which the U.S. EPA has established national ambient air quality standards, including: carbon monoxide, nitrogen dioxide, sulfur dioxide, PM<sub>10</sub>, total suspended particulate matter, ozone, volatile organic compounds (as a precursor to ozone), and lead. For the purposes of Air Pollutant Emission Notice reporting, criteria pollutants shall also include nitrogen oxides, fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, reduced sulfur compounds, municipal waste combustor organics, municipal waste combustor metals, and municipal waste combustor acid gases.

(2) 5 CCR 1001–5, Regulation 3, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements*, Part A, *Concerning General Provisions Applicable to Reporting and Permitting*, Section I, *Applicability*, Section I.B.43, *Uncontrolled Actual Emissions*; effective June 30, 2004:

(i) The annual emission rate corresponding to the annual process rate listed on the Air Pollutant Emission Notice form, without consideration of any emission control equipment or procedures. The division may allow a source to forego calculating or estimating its uncontrolled actual emissions of hazardous air pollutants upon a showing by the source and a determination by the division that the creation of such data is unreasonably costly, technically impractical or not reasonably related to information necessary for making regulatory decisions with respect to that source. The division's final determination may be appealed to the commission by the source.

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