

determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

#### List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 17, 2010.

Billie Clark,

Acting Regional Director, Western Region.

[FR Doc. 2011-1511 Filed 1-24-11; 8:45 am]

BILLING CODE 4310-05-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2011-0036; FRL-9256-6]

#### Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revision to Definitions; Common Provisions Regulation

**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. The intended effect of this proposal is to approve and make federally enforceable those portions of the revisions to Colorado's Common Provisions that are consistent with the Clean Air Act (CAA). Primarily, the revisions involved changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete definitions. In addition, a number of definitions were revised to reflect developments in federal law or were deleted to eliminate duplicative provisions that appear in other Colorado regulations. EPA is proposing to approve parts of the revision that delete duplicative or obsolete definitions, or that clarify existing definitions in a manner consistent with the CAA. In addition, EPA proposes to disapprove those portions of the rule revisions that EPA determined are inconsistent with the CAA. This action is being taken under section 110 of the CAA.

**DATES:** Comments must be received on or before February 24, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-0036, by one of the following methods:

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

- *E-mail:* [komp.mark@epa.gov](mailto: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-2011-0036. 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: P-AR, Denver, Colorado 80202-1129, (303) 312-6022, [komp.mark@epa.gov](mailto:komp.mark@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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- II. Background of State's Submittal
- III. EPA Analysis of State's Submittal
- IV. Consideration of Section 110(l) of the CAA
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##### 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 *AQCC* mean or refer to Air Quality Control Commission.

(vi) The initials *BACT* mean or refer to Best Available Control Technology, and the initials *LAER* means or refers to Lowest Achievable Emission Rate.

(vii) The initials *ASTM* means or refers to the American Society for Testing and Materials.

## 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 Submittal

On June 20, 2003, the State of Colorado submitted formal revisions to its SIP that changed or deleted numerous definitions in its Common Provisions. Colorado's Common Provisions provide definitions, statement of intent and general provisions that are applicable to all emission control regulations adopted by the State. Primarily, this revision involved changes designed to fix ambiguous language, to make the

definitions more readable or to delete obsolete definitions. In addition, a number of definitions were revised to reflect developments in federal law or deleted to eliminate duplicative provisions that appear in other Colorado regulations.

Definitions deleted include: Actual emissions, allowable emissions, BACT, LAER and the modification of a source. These definitions were deleted from the Common Provisions because the State placed these definitions in their Regulation 3.

Revisions to the Common Provisions also include grammatical, formatting and stylistic changes designed to make the regulation more readable. The State made these revisions to achieve consistency in the language used in the State's air quality regulations. These revisions do not change the applicability of any of the air quality regulation requirements. The State also added a number of abbreviations to the existing list.

The State clarified when fuel burning equipment would be considered part of a manufacturing process. The revisions to the Common Provisions change the definition of fuel burning and added a definition for manufacturing process equipment. The result was to clarify that fuel burning emissions are counted as manufacturing process emissions when they are vented through a common stack with other emissions from the manufacturing process. When fuel burning emissions are vented separately, the emissions are subject to regulations unique to fuel burning equipment.

The definition of construction was changed to clarify the distinction between the State's definition and the definition in federal programs. The clarification acknowledges that federal programs may utilize different definitions of construction and, in cases where enforceability of Federal programs are involved, the federal program definitions apply.

The State determined that many of its definitions in the Common Provisions were either obsolete or found in other State air quality regulations. In those cases, the State eliminated the definitions from the Common Provisions. Section III refers to smoking gasoline powered motor vehicles. Section IV addresses conflict of interest by AQCC members. The State deleted these sections because they are duplicated in other State regulations.

## III. EPA Analysis of State's Submittal

We have evaluated Colorado's June 20, 2003 submittal regarding revisions to the State's Common Provisions. 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 provided, within Section I of the Common Provisions, a new definition for what constitutes the meaning of the word "day." The new definition gives the Colorado Air Pollution Control Division discretion to change the meaning of day from the standard one to any other twenty-four hour period. Given that a day is often the time period for expressing emissions limitations, the revised definition potentially gives the State discretion, without going through a SIP revision, to modify emissions limitations for stationary sources. Such discretion violates section 110(i) of the CAA, which prohibits States (except in certain limited circumstances) from taking any action to modify requirements of a SIP with respect to stationary sources, except through a SIP revision. EPA proposes to disapprove this definition.

The State added language to its definition of "construction" for the purposes of prevention of significant deterioration (PSD) and new source review (NSR). The revised definition, for the most part, tracks those given at 40 CFR 51.165(a)(1)(xviii) and 51.166(b)(8). However, instead of providing that construction encompasses those changes that would result in an increase in emissions, the State's revision encompasses only those changes that would result in an increase in "actual emissions." "Actual emissions," in the context of PSD and NSR, is a defined term that in general equals past emissions over a consecutive 24-month period that is representative of normal operations (*see* 40 CFR 51.165(a)(1)(xii)(B), 51.166(b)(21)(ii)). It is not clear how past emissions, prior to a change due to construction, could be representative of normal operations after the change. In any case, the revision is less stringent than Federal requirements and EPA therefore proposes to disapprove it.

Colorado revised section II.I, relating to compliance certifications. Section II.I in the current SIP governs the use of credible evidence or information in compliance certifications and in establishing violations of the Colorado SIP. It reflects language at 40 CFR 51.212(c), promulgated by EPA on February 24, 1997 in the "Credible Evidence Rule" (62 FR 8314). The revision adds (in part) the following language: "Evidence that has the effect of making any relevant standard or permit term more stringent shall not be

credible for proving a violation of the standard or permit term.” In the preamble to the Credible Evidence Rule, EPA stated that it was not EPA’s intent to increase the stringency of any applicable requirement and that the Credible Evidence Rule did not do so (62 FR at 8323). EPA discussed at length and rejected the arguments made by commenters to the contrary (62 FR at 8323–27). For the reasons discussed within the preamble to the Credible Evidence Rule, credible evidence does not increase the stringency of any applicable requirement. EPA therefore proposes to disapprove the revision to section II.I.

EPA proposes to disapprove the deletion of Section IV of the Common Provisions. Section IV refers to provisions regarding potential conflicts of interest of members of the Colorado AQCC. These provisions require the disclosure of information when a potential conflict of interest has been identified. Section 128(a)(2) of the CAA requires that each SIP contain requirements for disclosure of potential conflicts of interest of heads of executive agencies or members of state boards that approve permits or enforcement orders under the CAA. In deleting Section IV, Colorado had intended to submit substitute provisions contained within the rules of procedure for the AQCC; however, Colorado has not submitted them to EPA for inclusion into Colorado’s SIP. As the SIP is required to have such provisions, EPA proposes to disapprove the deletion of Section IV.

Finally, the State revised the provision of Affirmative Defense for excess emissions during start up, shutdown and malfunction of equipment. The State in subsequent revisions sent to EPA modified the Affirmative Defense provision. EPA acted on these subsequent revisions in 2008 and the results of the action can be found in 40 CFR 52.320(c)113. Therefore, we are taking no action on the portion of the revision modifying the Affirmative Defense provision within the June 20, 2003 submittal because our subsequent action on the provision has superseded this revision.

#### *What EPA Is Proposing To Approve*

EPA proposes to approve specific definitions that were added or modified with the June 20, 2003 Common Provisions. These include the definitions for a continuous monitoring system, emergency power generator, manufacturing process, enforceable, federally enforceable, manufacturing process or processing equipment, and volatile organic compounds. The new

and modified definitions are consistent with the requirements of the CAA and do not change the stringency of any requirements of the SIP.

Changes that correct numerous grammatical, stylistic and formatting errors within the Common Provisions are proposed for approval by EPA. EPA also proposes to approve the deletion of definitions and Section III that are obsolete or duplicated elsewhere in Colorado’s SIP.

#### **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 submittal, EPA proposes to approve several portions of the revisions to the State’s Common Provisions. These portions do not relax the stringency of the Colorado SIP and in some cases strengthen it. Therefore, the portions of the revisions proposed for approval satisfy section 110(l).

#### **V. Proposed Action**

For the reasons expressed above, we propose to approve and disapprove revisions to the Common Provisions as submitted on June 20, 2003. EPA proposes to approve specific definitions that were added or modified with the June 20, 2003 Common Provisions. These include the definitions for continuous monitoring system, emergency power generator, manufacturing process, enforceable, federally enforceable, manufacturing process or processing equipment, and volatile organic compounds.

Changes that correct numerous grammatical, stylistic and formatting errors, duplicative and obsolete provisions, and the addition of several abbreviations within the Common Provisions are also proposed for approval by EPA. This includes the deletion of Section III of the Common Provisions regarding smoking gasoline powered motor vehicles.

EPA proposes to disapprove the modified definitions of “construction” and “day.” The additional language added to Section II.I regarding credible evidence in submitting compliance certifications is disapproved. EPA proposes to disapprove the deletion of

Section IV of the Common Provisions. Section IV refers to provisions regarding the conflicts of interest involving members of the AQCC. These provisions provide for the disclosure of information when a potential conflict of interest has been identified.

EPA will not act on Sections II.E and II.J, defining the provision of Affirmative Defense for excess emissions during start up, shutdown and malfunction of equipment. The State in subsequent revisions sent to EPA modified the Affirmative Defense provision. EPA acted on these subsequent revisions in 2008 (40 CFR 52.320(c)(113)).

#### **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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 13, 2011.

**Carol Rushin,**

*Deputy Regional Administrator, Region 8.*

[FR Doc. 2011-1475 Filed 1-24-11; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2007-0649; FRL-9256-5]

#### 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:** Proposed rule.

**SUMMARY:** EPA is proposing partial approval and partial disapproval of 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:** Comments must be received on or before February 24, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2007-0649, by one of the following methods:

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

- *E-mail:* [freeman.crystal@epa.gov](mailto:freeman.crystal@epa.gov).

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

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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.

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