

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R08-OAR-2007-1033; A-1-FRL-9209-3]

**Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation 1**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is partially approving and partially disapproving a State Implementation Plan (SIP) revision submitted by the State of Colorado regarding its Regulation 1. Regulation 1 provides certain emission controls for opacity, particulates, carbon monoxide and sulfur dioxide. The revision involves the deletion of obsolete, the adoption of new, and the clarification of ambiguous provisions within Regulation 1. The intended effect of EPA's action is to make Federally enforceable the revised portions of Colorado's Regulation 1 that EPA is approving and to disapprove portions of the regulation that EPA deems are not consistent with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

**DATES:** This final rule is effective February 25, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2007-1033. 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, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mark Komp, Air Program, U.S. Environmental Protection Agency, Region 8, Mail Code 8P-AR, 1595

Wynkoop Street, Denver, Colorado 80202-1129, telephone number (303) 312-6022, fax number (303) 312-6064, [komp.mark@epa.gov](mailto:komp.mark@epa.gov).

**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 words *Provision* or *Regulation* refer to Colorado's Regulation 1.
- (vi) The initials *SO<sub>2</sub>* mean or refer to sulfur dioxide, *HC* mean or refer to hydrocarbons and *CO* mean or refer to Carbon Monoxide.
- (vii) The initials *RACT* mean or refer to Reasonably Available Control Technology.

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**I. Background Information Regarding Colorado's Submittal**

On July 31, 2002, the State of Colorado submitted a formal revision to its SIP. The July 31, 2002 revision deleted obsolete provisions in Sections II.A.6, A.7, A.9 and C.3<sup>1</sup> regarding, respectively, alfalfa dehydrating plant drum dryers, wigwam burners, the static firing of Pershing missiles and a notice regarding waste materials. The provisions were deleted from the regulation because these sources no longer exist in the State and the notice regarding waste materials appears in other Colorado regulations.

Colorado added language to its open burning provisions (Section II.C.2.d) to clarify that the open burning of animal parts and carcasses are not exempt from permit requirements. However, a special allowance to conduct open burning activities without a permit is provided where the State Agricultural Commission declares a public health emergency or a contagious or infectious outbreak of disease that imperils livestock is evident. Such activities

require a telephone notice to State and local health departments prior to conducting such open burning activities. All necessary safeguards must be used to minimize impacts on public health or welfare.

The State revised the method in Section III.A.1.d for calculating emissions from multiple fuel burning units ducting to a common stack. Emissions are to be calculated on a pound per million British thermal unit (lbs/mmBtu) input and must be based on a weighted average of the individual allowable limits for each unit.

The State added clarifying language in several provisions of Regulation 1 stating that alternative performance test methods may be used with approval from the State. It also specified that ASTM or equivalent methods approved by the State may be used for fuel sampling from sources subject to Regulation 1.

In sections VI A.3.e. and VI.B.4.g. regarding SO<sub>2</sub> emissions, the State changed the overall emission limit for petroleum and oil shale refineries from 0.3 lbs per barrel of oil processed per day to 0.7 lbs per barrel of oil processed per day. The State also added new language that modifies the method for calculating compliance with emission limits for petroleum refining and cement manufacturing. The State deleted Section VI.B.5, which stipulates that new sources of SO<sub>2</sub> emissions that do not fall in specific source categories are subject to a 2 ton per day emission limit and are to utilize best available control technology.

**II. Response to Comments**

EPA did not receive comments on our July 21, 2010 **Federal Register** proposed action regarding the partial approval and partial disapproval of Colorado's SIP revisions to their Regulation 1.

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

Section 110(l) of the Clean Air Act 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 requirement of the Act. Those portions of the revision to Colorado's Regulation 1 that we are approving satisfy section 110(l), because those portions do not relax existing SIP requirements. Instead, the portions of the July 31, 2002 submittal EPA is

<sup>1</sup> All references in this notice to particular section numbers are to the designated sections within Regulation 1.

approving increase stringency of existing requirements, clarify existing requirements, or remove obsolete requirements. Therefore, section 110(l) is satisfied.

#### IV. Final Action

EPA is approving revisions to the following provisions in Regulation 1: (1) Deletion of Sections II.A.6, II.A.7, and II.A.9 regarding emission limits for sources that no longer exist in the State and the deletion of Section II.C.3 regarding an obsolete notice involving the disposal of waste materials. The deletion of Sections II. A.6, A.7 and A.9 will cause a numbering change of subsequent paragraphs within Sections II.A. EPA is adopting the new numbering scheme for section II.A.; (2) revisions to Section II.C.2.d. regarding the burning of diseased animal carcasses to prevent a public health emergency; (3) revision of Section III.A.1.d involving the State's method for calculating emissions from multiple fuel burning units ducted to a common stack; (4) the deletion of Section III.C.2 regarding the deletion of process weight emission standards for alfalfa drum dryers. The deletion of Section III.C.2 will cause a numbering change of subsequent paragraphs within Section III.C. EPA is adopting the new numbering scheme for section III.C.; (5) Federal adoption of Section V regarding emission standards for electric arc furnaces, except for a portion of Section V.A.2 where the State has specified that their director has discretion to approve other credible methods for determining emission rates; and (6) revisions to Sections VI.A.3.e, VI.A.3.f, VI.B.4.e, and VI.B.4.g.(ii) regarding the methods used for the averaging of emissions over a 24 hour period.

EPA is disapproving revisions to the following provisions in Regulation 1: (1) Revisions to Section III.A.2. and Section III.C.3 involving director's discretion regarding the method for conducting performance tests; (2) the revision within Section V.A.2. where the State gives its director's discretion regarding the method used to determine compliance with electric arc furnaces' emission standards; (3) revisions to Sections VI.B.4.e and VI.B.4.g(ii) regarding changes in the SO<sub>2</sub> emission limits for petroleum and oil shale refining; (4) revisions to Section VI.B.5 regarding SO<sub>2</sub> emission limits for new sources not falling in specified source categories; and (5) revisions to Sections VI.C. and VI.F. regarding the use of director's discretion for alternative methods to show compliance with fuel sampling plans and alternative compliance procedures respectively.

#### 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.

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 March 28, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 23, 2010.

**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 paragraph (c)(115) to read as follows:

#### § 52.320 Identification of plan.

\* \* \* \* \*  
(c) \* \* \*

(115) On July 31, 2003, the State of Colorado submitted revisions to Colorado's 5 CCR 1001-3, Regulation 1, that deleted Sections II.A.6, A.7, A.9 and C.3, regarding, respectively, alfalfa dehydrating plant drum dryers, wigwam burners, the static firing of Pershing missiles and a notice regarding waste materials. The State also deleted emission limitations for alfalfa plant drum dryers by removing Section III.C.2. Colorado's deletion of Sections II. A.6, A.7 and A.9 and Section III.C.2 will cause a numbering change of subsequent paragraphs within Sections II.A and III.C. EPA is adopting the new numbering scheme for sections II.A. and III C. Section II.C.2.d. regarding agricultural open burning is modified to include the burning of diseased animal carcasses to prevent a public health emergency. Section III.A.1.d is modified for incorporation of new State's method for calculating emissions from multiple fuel burning units ducted to a common stack. Section V is added regarding emission standards for electric arc furnaces, except for the director's discretion provision provided for in Section V.A.2. Sections VI.A.3.e, VI.A.3.f, VI.B.4.e, and VI.B.4.g(ii) are modified regarding the methods used for the averaging of emissions over a 24 hour period.

(i) Incorporation by reference.

(A) 5 CCR 1001-3, Regulation 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, Section II, Smoke and Opacity, Section II.C.2.d, effective March 2, 2002.

(B) 5 CCR 1001-3, Regulation 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, Section III, Particulate Matter, Fuel Burning Equipment, Section III.A.1.d, effective September 30, 2001.

(C) 5 CCR 1001-3, Regulation 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, Section V, Emission Standard for Existing Iron and Steel Plant Operations, effective September 30, 2001.

(1) The submittal contains Section V.A.2 with the language:

"Emissions from gas-cleaning device shall not exceed a mass emission rate of 0.00520 gr/dscf of filterable particulates maximum two-hour average, as measured by EPA Methods 1-4 and the front half of Method 5 (40 CFR 60.275, and Appendix A, Part 60), or by other credible method approved by the Division. This particulate emissions standard does not include condensable emissions, or the back half emissions of Method 5". The language "or by other credible method approved by the Division" is disapproved. The language

"Appendix A, Part 60" is changed to "appendices A1 through A3, Part 60" in order to comply with the current nomenclature of Part 60.

(D) 5 CCR 1001-3, Regulation 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, Section VI, Sulfur Dioxide Emission Regulations, Sections VI.A.3.e, VI.A.3.f, VI.B.4.e, and VI.B.4.g(ii), effective September 30, 2001.

(1) Sections VI.B.4.e and VI.B.4.g(ii) list an emission rate of 0.7 lbs. sulfur dioxide, for the sum of all SO<sub>2</sub> emissions from a given refinery per barrel of oil processed, per day. This emission rate is disapproved. The emission rate remains unchanged at 0.3 lbs. All remaining language within Sections VI.B.4.e and VI.B.4.g(ii) is approved.

[FR Doc. 2011-1497 Filed 1-25-11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2009-0713; FRL-8855-1]

#### Mefenoxam; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of mefenoxam in or on multiple commodities which are identified and discussed later in this document. This regulation additionally removes the individual tolerance on lingonberry, as it will be superseded by inclusion in bushberry subgroup 13-07B. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective January 26, 2011. Objections and requests for hearings must be received on or before March 28, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0713. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Laura Nollen, Registration Division (7509P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7390; e-mail address: [nollen.laura@epa.gov](mailto:nollen.laura@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://www.gpoaccess.gov/ecfr>.