

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2011-0340; FRL-9312-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revised Definitions; Construction Permit Program Fee Increases; Regulation 3

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the two State Implementation Plan (SIP) revision packages submitted by the State of Colorado on August 1, 2007. EPA is proposing to approve the August 1, 2007 submittal revisions to Regulation 3, Part A, Section I where the State expanded on the definition of nitrogen dioxide to include it as a precursor to Ozone. EPA is also proposing to approve numerous housekeeping changes in the August 1, 2007 submittals. In addition, EPA proposes to take no action on several revisions to Colorado's Regulation 3 regarding New Source Review, that are contained in this submittal, where previously proposed, pending or future actions by EPA have addressed or will address these revisions. EPA is also proposing to not act on three provisions in the submittal that are not in Colorado's SIP. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** Comments must be received on or before June 27, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-0340 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:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- *Hand Delivery:* 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-2011-0340. 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](mailto:komp.mark@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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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 *APEN* mean or refer to Air Pollutant Emission Notice.

(vi) The initials *NSR* mean or refer to New Source Review, the initials *PSD* mean or refer to Prevention of Significant Deterioration and the initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(vii) The initials *NO2* mean Nitrogen Dioxide.

(viii) The initials *RACT* mean Reasonable Achievable Control Technology.

##### **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://www.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

The State's August 1, 2007 submittal consisted of two revisions to the State's Regulation 3. The first revision was adopted by the State on August 17, 2006 and corrected minor issues EPA had identified regarding Colorado's New Source Review (NSR) program. The State adopted the revisions in order to ensure that the State would continue to have federal approval of its NSR program. In the definitions section of Regulation 3, Part A, Section I.B.16, Colorado adopted language to treat nitrogen dioxide as an ozone precursor. The State added in Part A, Section II.C.2.b(ii) under its Air Pollution Emission Notice (APEN) requirements that an increase of one ton per year or greater of nitrogen oxides emissions from a source with annual actual emissions less than one hundred tons and located in an ozone nonattainment area constituted a significant change. A significant change meant that a new APEN must be submitted to the State.

In the same revision, Methyl Ethyl Ketone was removed as a reportable compound from Appendix B of Regulation 3. The State added T-Butyl Acetate as a non-criteria reportable pollutant in Regulation 3, Appendix B. Minor grammatical revisions were also made throughout the revision.

The second revision adopted on December 14, 2006 contained annual emission fee increases in Part A, Section VI.D.1 of Regulation 3. The increase in fees is used to pay for the State's increased workload from the processing of APENs and permits.

## III. EPA Analysis of State's Submittals

We have evaluated Colorado's August 1, 2007 submittal regarding revisions to the State's Regulation 3. We are proposing to approve the revisions, except for some specific revisions where we are taking no action. We are not acting on specific revisions because of prior actions taken by EPA on these revisions.

In the August 17, 2006 State adopted revision included in the August 1, 2007 submittal, the State corrected minor issues EPA had identified regarding Colorado's NSR program in order to ensure that the State would continue to have federal approval of the State's NSR program. EPA has proposed to approve Colorado's NSR program in a separate action on December 7, 2005 (70 FR 72744). The changes to Colorado NSR program that are part of the August 17, 2006 adopted revisions include revisions to Regulation 3, Part D, Sections: II.A.26.a.(i); II.A.26.g.(iii); and II.A.40.5. We are not taking action on these revisions within the context of today's action rather we will act on these revisions in a future action.

The August 17, 2006 adopted revisions also contains minor corrections that we have proposed to approve in a separate action on January 25, 2011 (76 FR 4271); therefore, we are not acting on those here. These corrections include amendments to Part A. II.C.2.b.(ii) and Part A. II.C.3.d.

Colorado adopted language within Regulation 3, Part A, Section I.B.16 to treat nitrogen dioxide as an ozone precursor. EPA proposed a separate action regarding approval of the adoptive language on April 19, 2011 (76 FR 21835). The four changes proposed in our April 2011 action include changes to the following regulations within Regulation 3, Part D: II.A.22.a; II.A.24.d, II.A.38.c, and II.A.42.a). However, this proposed action is limited to the State's treatment of nitrogen dioxide as an ozone precursor as it pertains to PSD. In this action we are approving the change in the definition within Part A, Section I.B.16. as it pertains to nitrogen dioxide as a precursor to ozone.

While Colorado's Cover Letter for the August 1, 2007 Submittal A identified the specific regulations the State requested that EPA approve into the SIP, the regulation compilation

included several revisions that are not approved as part of the SIP. Therefore, since the State did not request action on these non-SIP regulatory changes, and they are not provisions that we approve into a SIP, EPA is not proposing any action on them. There are three provisions that are not in the SIP that we are not acting on. First, changes to Appendix B of Regulation 3 where the State removed Methyl Ethyl Ketone as a reportable compound. Second, the State added T-Butyl Acetate as a non-criteria reportable pollutant in Regulation 3, Appendix B. Third, changes made to Part C, Concerning Operating Permits (Part C. X.A.5). These revisions are not part of the EPA-approved SIP and these Appendices are not incorporated by reference into 40 CFR 52.320. Thus, because we are obligated to act on Colorado's SIP submission, we plan to not act on these revisions as a revision to the SIP.

Minor grammatical revisions made throughout the revisions are proposed for approval. These include revisions to the following provisions in Regulation 3, Part A, Section I.B.9.d. Finally, the December 14, 2006 revision containing the emission fee increases and wording change in Part A, Section VI.D.1 are proposed for approval.

## 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 August 1, 2007 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 since they are housekeeping in nature. 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

In this action we are proposing to approve the change in the definition within Part A, Section I.B.16. as it pertains to nitrogen dioxide as a precursor to ozone. We are also proposing for approval the increase in the amount of the fees charged for pollutant emissions and minor wording

additions as specified in Regulation 3, Part A, Section VI.D.1.

Minor grammatical revisions made throughout the revisions, as identified above, are also being proposed for approval.

## VI. Statutory and Executive Order Reviews

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: May 19, 2011.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2011-13272 Filed 5-26-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2011-0416; FRL-9312-4]

### Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO<sub>x</sub>) and oxides of sulfur (SO<sub>x</sub>) emissions from facilities emitting 4 tons or more per year of NO<sub>x</sub> or SO<sub>x</sub> in the year 1990 or any subsequent year under the SCAQMD's Regional Clean Air Incentives Market (RECLAIM) program. We are approving

a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by June 27, 2011.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2011-0416, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

*Docket:* Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** Lily Wong, EPA Region IX, (415) 947-4114, [wong.lily@epa.gov](mailto:wong.lily@epa.gov).

### SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.