



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2017-0446; FRL-9969-46-Region 8]

### Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation Number 3

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a portion of the State Implementation Plan (SIP) revisions submitted by the State of Colorado on February 25, 2015. The revisions are to Colorado Air Quality Control Commission (Commission) Regulation Number 3, Parts A, B and D. The amendments the EPA is taking final action on include: Revisions to provisions for permitting emissions for particulate matter less than 2.5 micrograms (PM<sub>2.5</sub>) in Part D, modifications to the provisions for filing revised Air Pollution Emission Notices (APEN) in Part A and updates to public notice publication requirements in Part B. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification Number EPA-R08-OAR-2017-0446. All documents in the docket are listed on the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information 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 through <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. The EPA requests that 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:** Kevin Leone, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6227, [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Revisions to PM<sub>2.5</sub> Significant Impact Level (SIL) and Significant Monitoring Concentration (SMC) Provisions

Colorado's SIP submittal revises the SIL and SMC provisions for PM<sub>2.5</sub> in the State's Prevention of Significant Deterioration (PSD) permitting program. Our proposed rulemaking, which was published on August 18, 2017, details the relevant court decisions and the EPA's corresponding rulemakings regarding PM<sub>2.5</sub> SILs and SMCs (See 82 FR 39396.) As explained in our proposal notice, Colorado's submittal is consistent with EPA's revised rules.

Revisions to APEN Reporting

Colorado has revised its APEN reporting requirements to clarify when a revised APEN is required due to a significant change in annual actual emissions. The revision would clarify that

the thresholds for determining significant changes are based on an individual emission unit's actual emissions on a pollutant-by-pollutant basis, not on facility-wide emissions. This revision simplifies and streamlines the requirements for filing revised APENs because the source's actual annual emissions are the relevant information for inventory and fee purposes when reporting past years' emissions or reporting significant changes in annual actual emissions. Our proposed rulemaking outlines the rationale for this revision and provides a detailed example of the revision.

#### Revisions to Public Notice Requirements

Previously Part B, Section III.C.4., required the State to publish public notice of certain proposed minor source construction permit applications, including sources that apply for a permit to limit the potential to emit criteria pollutants, in a newspaper of general distribution in the area where the proposed project will be located or by other such method reasonably designed to ensure effective public notice. We are approving Colorado's revision to include other means authorized by state statute and federal regulation that are designed to provide public notice of the applicable permitting action. Please see the notice for our proposed rulemaking for details.

#### **II. Response to Comment**

No comments were received on our August 18, 2017 notice of proposed rulemaking.

#### **III. What are the Changes that EPA is Taking Final Action to Approve?**

The EPA is taking final action to approve a portion of the SIP revisions as submitted by Colorado on February 25, 2015, pertaining to PM<sub>2.5</sub> SILs and SMCs. As explained in our proposed rulemaking, these changes meet the requirements under CAA section 110(l), which states that the EPA cannot approve a SIP revision that interferes with any requirement

concerning attainment, reasonable further progress, or any other applicable requirement of the Act. The revisions to the PSD program in Part D, Regulation Number 3 comply with the requirements of 40 CFR 51.166 as revised by the EPA in response to the D.C. Circuit Court of Appeals decision regarding PM<sub>2.5</sub> SILs and SMCs. See 78 FR 73698.

The EPA is taking final action to approve a portion of the SIP revisions as submitted by Colorado on February 25, 2015, pertaining to revisions to Colorado's APEN requirements. These revisions, as outlined in our proposed rulemaking, comply with section 110(l) because the revisions are limited to the filing of revised APENs that are designed to update Colorado's emissions inventory or used to calculate emissions fees.

The revisions to the public notice minor source permitting requirements comply with section 110(l) because, we find that the revisions are consistent with our regulations regarding public notice for minor NSR programs. As explained in detail in our proposal, the EPA interprets the public notice requirements in 40 CFR 51.162 for minor NSR programs to allow for any publishing venue for which it is reasonable to conclude the public has routine and ready access.

For the reasons expressed above and in our proposed rulemaking, the EPA is taking final action to approve revisions to Regulation Number 3, Parts A, B and D and Appendix A in the February 25, 2015 submittal as shown in Table 1 below. Appendix A was revised as a conforming change to the APEN revisions. We are also approving the renumbering and formatting changes for the definition of "emission unit" in Regulation Number 3, Part D, I.A.13.a.; and II.A.13.a.(i) - (ii).

Table 1 - List of Colorado Revisions that EPA is Approving

<b>Revised Sections in February 10, 2015 Submission Final Action for Approval</b>
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<p><b>Regulation Number 3, Part A:</b>  II.C.2.b.(i)-(iii); and II.C.4.a. and b.  Appendix A</p>
<p><b>Regulation Number 3, Part B:</b>  III.C.4.</p>
<p><b>Regulation Number 3, Part D:</b>  II.A.13.a.(i) – (ii); VI.A.2.c.; and VI.B.3.a.(iii)</p>

The EPA is not acting on revisions from Colorado’s February 25, 2015 submittal related to greenhouse gas and carbon dioxide equivalent (CO2e) revisions and the associated renumbering which was a result of Colorado’s proposed greenhouse gas revisions in Parts A and D. These revisions will be acted on in a separate rulemaking.

**IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Colorado rules as described in the amendments to 40 CFR part 52 set forth in this document. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 8 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the

next update to the SIP compilation.<sup>1</sup>

## **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, the 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 in 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 (Public Law 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

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

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 the 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The 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 [insert date 60 days from date of publication of this document in the Federal Register]. 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 CAA section 307(b)(2).)

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

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

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 27, 2017.

Suzanne J. Bohan,  
Acting Regional Administrator,  
Region 8.

40 CFR part 52 is amended as follows:

**PART 52 — APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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 in paragraph (c) is amended as follows:

a. By revising, under the centered heading **“5 CCR 1001-05, Regulation Number 3, Part A, Concerning General Provisions Applicable to Reporting and Permitting”** the table entries for “II.” and “Appendix A.”

b. By revising, under the centered heading **“5 CCR 1001-05, Regulation Number 3, Part B, Concerning Construction Permits”** the table entry for “III.”

c. By revising, under the centered heading **“5 CCR 1001-5, Regulation Number 3, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration”** the table entries for “II.” and “VI.”

The revisions read as follows:

**§ 52.320 Identification of plan.**

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(c) \* \* \*

Title	State effective date	EPA effective date	Final Rule citation/date	Comments
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<b>5 CCR 1001-5, Regulation Number 3, Part A, Concerning General Provisions Applicable to Reporting and Permitting</b>				
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II. Air Pollutant Emission Notice (APEN) Requirements	10/15/2014	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b>Federal Register</b> citation], [Insert date of publication in the <b>Federal Register</b> ]	
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Appendix A, Method for Determining De Minimis Levels For Non-Criteria Reportable Pollutants	10/15/2014	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b>Federal Register</b> citation], [Insert date of publication in the <b>Federal Register</b> ]	
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<b>5 CCR 1001-5, Regulation Number 3, Part B, Concerning Construction Permits</b>				
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III. Construction Permit Review Procedures	10/15/2014	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b>Federal Register</b> citation], [Insert date of publication in the <b>Federal Register</b> ]	
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**5 CCFR 1001-5, Regulation Number 3, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration**

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II. Definitions	10/15/2014	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b>Federal Register</b> citation], [Insert date of publication in the <b>Federal Register</b> ]	Except II.A.26.d., the phrase “and only PM <sub>2.5</sub> emissions can be used to evaluate the net emissions increase for PM <sub>2.5</sub> ”
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VI. Requirements applicable to attainment and unclassifiable areas and pollutants implemented under Section 110 of the Federal Act (Prevention of Significant Deterioration Program)	10/15/2014	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b>Federal Register</b> citation], [Insert date of publication in the <b>Federal Register</b> ]	Except for VI.A.1.c., the phrase “for phases that commence construction more than 18 months after the initial granting of the permit”; VI.A.2., the phrase “either Section VI.A.2.a. or b., as clarified for any relevant air pollutant, in Section VI.B.3.a.(iii) in reference to PM <sub>2.5</sub> monitoring exemption; and VI.B.3.d.
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[FR Doc. 2017-21952 Filed: 10/11/2017 8:45 am; Publication Date: 10/12/2017]