

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).

- *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, 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-2007-0649. 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, Mailcode 8P-AR, 1595 Wynkoop, 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 *Colorado* and *State* mean the State of Colorado.

## Table of Contents

- I. General Information
- II. Background
- III. What action is EPA proposing?
- IV. What is the State process to submit these materials to EPA?
- V. EPA's Review and Technical Information
- VI. Proposed Action
- VII. Statutory and Executive Order Reviews

### I. General Information

1. *Submitting CBI.* Do not submit CBI 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

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 action proposed today addresses the APEN SIP revisions submitted by the State of Colorado 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. EPA's evaluation of 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. For each provision, the substantive language changes, EPA's proposed action, EPA's comments about the general nature of the changes, and the rationale for the Agency action are reported in Table 1 of the Technical Support Document (TSD) underpinning our proposed action.<sup>1</sup> For actions involving a provision's proposed disapproval our analysis does reference and address relevant material supporting the revision's adoption by the State. In some cases, EPA asked the State for clarification of revisions; these clarifications are also available in the docket. Through this approach to the cumulative revisions, EPA intends for

<sup>1</sup> EPA's Technical Support Document (TSD), part of the docket for this proposed action (accessible on the [www.regulations.gov](http://www.regulations.gov) Web site under Docket Number EPA-R08-OAR-2007-0649) clearly identifies for each of the APEN provisions the cumulative effect of the revisions (if any) adopted by the State between 1997 and 2007. The TSD's Table 1 lists all the APEN provisions (requirements and exemptions) and for each it provides: the provision number in the 1997 EPA-approved SIP, and in the 2007 State submittal; a short description or title of the provision, and cumulative language changes from 1997 to 2007; EPA's proposed action (Approval, Disapproval, or No Action); and EPA's comments summarizing the nature of the changes, and providing a rationale for supporting the proposed action. EPA believes that this approach allows a clear understanding of the overall revisions adopted by the State for each provision and of the rationale for the Agency's proposed action. The cumulative revisions identified in Table 1 of the TSD were part of the Colorado submissions dated September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006 and August 1, 2007.

this proposed rule action to address all APEN revisions as submitted by the State of Colorado on September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006, and August 1, 2007.

### III. What action is EPA proposing?

EPA is proposing: (a) To approve some of the revisions to the Colorado APEN provisions submitted to EPA on September 16, 1997; June 20, 2003; July 11, 2005; August 8, 2006; and August 1, 2007; (b) to disapprove some of the revisions; and (c) to not take action on a few revisions unrelated to the SIP or to maintenance of the National Ambient Air Quality Standards (NAAQS). As mentioned in section II above, the specific provisions we propose to approve, disapprove, or not act on are identified in the TSD; those that require extended analysis are discussed in section V below.

### IV. What is the State process to submit these materials to EPA?

Section 110(k) of the CAA addresses EPA's rulemaking action on SIP submissions by states. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA.

The Colorado Air Quality Control Commission (AQCC) held public hearings for, and adopted, on March 31, 1996 the APEN revisions submitted to EPA September 16, 1997. On June 20, 2003 Colorado submitted two APEN revision packages. For the first package, public hearing and adoption dates were respectively February 21 and July 18, 2002. For the second, the revisions were submitted to public hearing and adopted on the same October 17, 2002 date. For APEN revisions submitted to EPA on July 11, 2005, the Colorado AQCC held public hearings February 19, April 15, and April 16, 2004, and adopted the revisions on the latter date. The Colorado AQCC held a public hearing on December 16, 2004 for APEN revisions adopted the same day and submitted to EPA August 8, 2006. For the last of the submissions considered in this action, APEN revisions submitted to EPA on August 1, 2007, the Colorado AQCC public hearing and adoption took place on August 17, 2006.

EPA has reviewed the submittals by the State of Colorado and has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. All Colorado APEN

revisions submittals referenced above, and addressed in this action, became complete by operation of law under section 110(k)(1)(B) of the CAA six months after their submittal dates.

#### V. EPA's Review and Technical Information

As indicated in the Background section of this action, for each of the APEN provisions in Regulation Number 3, Part A, Sections II.A. through II.D., EPA's TSD identifies the cumulative revisions submitted by the State between 1997 and 2007, provides EPA's assessment of the revisions, and indicates EPA's proposed action (approval, no action, or disapproval). The TSD compares the cumulative revisions of each APEN provision with the current EPA-approved language of the same provision, effective as of February 20, 1997.<sup>2</sup> For revisions to APEN provisions that must be addressed in greater detail, EPA's evaluation references the specific submittal or submittals affecting the changes, their related material, as well as any subsequent information/clarification provided to EPA by the State of Colorado. All material contributing to EPA's proposed action is referenced appropriately and made available for review as part of the docket supporting the Agency's proposed rulemaking.

For clarity, EPA's evaluation of the APEN revisions submitted by the State of Colorado between 1997 and 2007 considers four groups identified according to EPA's action. The first group consists of the APEN provisions that the State did not revise between September 1997 and August 2007. These provisions retained in the 2007 APEN submission are the same language as the provisions in the 1997 EPA-approved Colorado SIP. For this group of APEN provisions there are no SIP revisions for EPA to propose action on. The second group consists of the APEN provisions for which the State had adopted only clerical changes, such as grammar or style changes, that do not reflect any substantive modifications. For example, some of the changes expanded abbreviations such as "APEN," and others replaced the digits of a numerical value with its equivalent text—i.e., "four hundred" instead of "400." EPA proposes to approve all the clerical revisions submitted by the State of Colorado between September 16, 1997 and August 1, 2007.

The third and fourth groups consist of the Colorado APEN provisions that underwent substantive revisions; the

third group are those provisions EPA proposes to approve and the fourth those EPA proposes to disapprove. In general, our evaluation of each substantive revision assesses whether the revision makes the SIP more or less stringent, or weakens protection of the NAAQS. In carrying this out, we consider whether the revisions satisfied recordkeeping and reporting requirements set out in 40 CFR 51.211. We also consider whether the revisions affected the applicability of substantive provisions elsewhere within the SIP. In particular, a source that is exempt from APEN requirements is also exempt from construction permitting requirements (see Regulation 3, Part B, Section III.D.1.a). As a result, the requirements for stationary sources at 40 CFR 51.160 are implicated by the submitted APEN exemptions we review in this proposal.

For many of the provisions affected by the substantive revisions submitted by the State, EPA's rationale for its proposed action is explained and provided in Table 1 of the TSD. For the remaining provisions, affected by revisions requiring more complex and detailed evaluations, we do so in the following paragraphs.

We examine first the revisions that EPA proposes to approve, in the order as they appear in Regulation 3. Provision II.B.1.b.<sup>3</sup> pertains to alternative methods for emissions estimates. The language of the 1997 EPA-approved provision included a reference to "Section II.E.2. of this Regulation No. 3, Part A.," which addressed deferrals of APEN reporting timelines—a subject unrelated to the issue of emissions estimates and alternative methods. This reference was an obvious clerical error corrected by the State, with the June 20, 2003 submission,<sup>4</sup> to "Section II.C.2." The corrected reference, on the other hand, specifies thresholds for significant emission changes, which relate to the accuracy required for emission estimates. The lower the significant emission changes threshold, the greater the precision required of an acceptable alternate emissions estimate. EPA therefore proposes to approve this correction.

EPA also proposes to approve revisions to II.B.3.a., which sets thresholds (in tons per year) of criteria pollutants for APEN applicability. The revisions clarify the understanding that the one ton per year (tpy) threshold in

nonattainment areas applies to the pollutants for which the area is in nonattainment. EPA proposes approval of this revision because the change does not make the SIP less stringent or affect the ambient air quality.

Next, APEN provision II.B.9. of the EPA-approved SIP identifies criteria pollutants for the purpose of APEN applicability. The Colorado AQCC adopted on April 16, 2004 the revised provision that was submitted to EPA on July 11, 2005; Colorado retained the same language in the August 8, 2006 and August 1, 2007 submissions. The revision generally defines criteria pollutants as those for which EPA has established a NAAQS. The revision also identifies NO<sub>x</sub> and volatile organic compounds (VOCs) as precursors to ozone. EPA proposes approval of this revision because it makes the definition of criteria pollutants (for the purposes of APEN applicability) consistent with the federal definition. In the same submittal, the AQCC renumbered the provision to I.B.16. EPA is also proposing to approve this renumbering, which does not affect the applicability of the provision. EPA notes that since prior to this renumbering Section I.B.16 was "reserved," the move of II.B.9 to this section does not replace any other provision, and therefore does not impact the stringency of the SIP.

EPA is also proposing to approve the revision to II.C.1.h. submitted on July 11, 2005. The revision is intended to update the reference to the definition of "major stationary source." However, the reference specified, Section II.A.25., gives the definition of "Minor Source Baseline Date," while Section II.A.24. defines "Major Stationary Source." EPA has discussed this with the State; the State concurs that the reference should be "Section II.A.24." and has agreed to correct this discrepancy in a later submittal to EPA. Given that the correct reference can be determined from the context, EPA proposes approval of the revision.

A revision to II.C.3.d was submitted to EPA on August 8, 2006. The revised provision changes the time APENs are due for control equipment at condensate storage tanks located at oil and gas exploration facilities. However, the revision does not exempt such sources from reporting and therefore does not relieve them from any substantive requirements of the SIP. As the revision does not impact emission levels and ambient air quality standards, EPA is proposing to approve it.

We turn to exemptions from APEN requirements that have been added to Section II.D.1 in the submittals. First, II.D.1.nnn exempts "Fugitive emissions

<sup>3</sup> Unless otherwise specified, all references to sections in the remainder of this notice are to sections in Part A of Regulation 3.

<sup>4</sup> This revision was adopted by Colorado AQCC July 18, 2002.

<sup>2</sup> 62 FR 2910, January 21, 1997.

of hazardous air pollutants that are natural constituents of native soils and rock (not added or concentrated by chemical or mechanical processes) from underground mines or surface mines unless such source is a major source of hazardous air pollutants under Part C of Regulation No. 3.” The provision was adopted on March 31, 1996, and submitted to the EPA on September 16, 1997. This exemption will not affect any substantive requirement in the SIP relating to emissions of criteria pollutants and thus EPA is proposing approval.

EPA is also proposing approval of the exemption in APEN provision II.D.1.000: “The use of pesticides, fumigants, and herbicides when used in accordance with requirements established under the Federal Insecticide, Fungicide and Rodenticide Act as established by the U.S. EPA (United States Code Title 7, Section 136 *et seq.*)” The exemption was adopted on March 31, 1996, and submitted to the EPA on September 16, 1997. Such sources are not elsewhere regulated in the SIP and therefore EPA proposes approval of this exemption.

The exemption in II.D.1.ppp, “Ventilation of emissions from mobile sources operating within a tunnel, garage, or building,” was submitted to EPA on September 16, 1997. EPA proposes approval of this revision to the Colorado APEN SIP on the basis of the following considerations. The Colorado APEN reporting requirements are applicable only to stationary sources (*see* Regulation Number 3, Part A, Section II.A.). Section 302(z) of the (CAA) defines stationary sources as “any source of an air pollutant except those emissions resulting from an internal combustion engine for transportation purposes \* \* \*.” The exemption applies only when a mobile source (as defined in Regulation 3) is operating for transportation purposes. We recommend that in a future SIP revision the State of Colorado clarify the applicability of the current provision.

EPA also proposes to approve the exemption in Section II.D.1.dddd., applicable to “Non-road engines as defined in Section I.B.29. of this Part A, except certain non-road engines subject to state-only air pollutant emission notice and permitting requirements pursuant to Section I.B.29.c. of this part.” The definition of non-road engines in Section I.B.29 is consistent with the federal definition of non-road engine at 40 CFR 1068.30. Under section 302(z) of the CAA non-road engines are specifically excluded from the definition of stationary sources, to

which the Colorado APEN requirements apply (*see* Section II.A.).

APEN substantive revisions submitted by the State to EPA between September 16, 1997 and August 1, 2007 include revisions to or additions of five exemption provisions that EPA proposes to disapprove. The first revision we propose to disapprove regards the APEN exemption for open burning activities, in Section II.D.1.q. During the period considered here, some of the open burning provisions were moved by the State from Regulation Number 1 to Regulation Number 9 (which is a State-only Regulation, and therefore outside the Colorado SIP) and then back to Regulation Number 1. At the same time, Colorado submitted a June 20, 2003 revision of the “Open burning activities” provision in Section II.D.1.q. that changed a reference to Regulation Number 1 (part of the Colorado SIP) into a reference to Regulation Number 9. Since, as noted above, Regulation Number 9 is enforceable only by the State, EPA proposes to disapprove the change to the reference to Regulation Number 9.

EPA is proposing to disapprove the APEN provision at Section II.D.1.xxx. exempting “Deaerator/vacuum pump exhausts,” adopted on March 31, 1996 and submitted to EPA on September 16, 1997. This provision would potentially exempt emissions both from the devices and from the liquid or gas the device operates on. If the liquid or gas operated on contains high levels of criteria pollutants or their precursors (either in a dissolved form in liquid or mixed in gas), then high levels of criteria pollutants may be emitted from these devices. As APEN exemptions are linked to exemption from construction permitting, this exemption may increase emissions of criteria pollutants (or their precursors). Under section 110(l) of the Act, EPA cannot approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Furthermore, as these stationary sources may emit significant amounts of criteria pollutants, the exemption from permitting fails to ensure that construction or modification of these sources will not interfere with attainment or maintenance of the NAAQS (*see* 40 CFR 51.160(a)(2)). EPA therefore proposes to disapprove the exemption in II.D.1.xxx.

EPA also proposes to disapprove APEN exemption A–II.D.1.sss and its subdivisions A–II.D.1.sss.(i) through A–II.D.1.sss.(iii). This provision exempts three tiers of stationary internal

combustion engines from APEN requirements. The tiers are defined by engine horsepower and hours of operation per year: (1) Those engines less than or equal to 175 horsepower that operate less than 1450 hours per year; (2) those greater than 175 horsepower and less than or equal to 300 horsepower that operate less than 850 hours per year; and (3) those greater than 300 horsepower that operate less than 340 hours per year. As a result of the exemption from APEN requirements, such engines are also exempt from construction permit requirements in Part B of Regulation 3 (*see* Part B, Section III.D.1.a).

The provision does not require owners or operators that claim the exemption to keep records of the hours of operation. As a result, the limit on the hours of operation is unenforceable. In parallel instances where a source seeks to limit its potential to emit (“PTE”) through an operational limitation (such as on hours of operation) in a permit, EPA guidance recommends that the limitation be enforceable as a practical matter. (Memorandum from Terrell E. Hunt & John S. Seitz entitled “Guidance on Limiting Potential to Emit in New Source Permitting” (June 13, 1989).) The guidance specifically notes, “permits with limits on hours of operation \* \* \* should require an operating log in which the actual hours of operation \* \* \* are recorded.” (*Id.* at 6.) The logs should be made available to the permitting authority, which allows it to verify compliance with the limit. Although this recommendation is in the context of practical enforceability of operational limitations in a permit, the underlying principle applies to enforceability of SIP provisions. Section 110(a)(2)(A) of the CAA requires that emission limitations in a SIP be enforceable.<sup>5</sup> Under the principle set out in the guidance discussed above, the provision is unenforceable, as there is no requirement to keep records of hours of operation.

Without an enforceable limit on the hours of operations, engines in even the lowest tier (175 horsepower or less) may emit up to 8.4 tons per year (“tpy”) of NO<sub>x</sub> for gasoline fuel or 23.8 tpy of NO<sub>x</sub> for diesel fuel, if operated for the full year. This is considerably above the level for the existing source-specific

<sup>5</sup> In addition, 40 CFR 51.160(a)(1) requires SIPs contain legally enforceable procedures for determining whether construction or modification of a stationary source will violate applicable portions of the control strategy, and 40 CFR 51.211(b) requires SIPs contain legally enforceable procedures for requiring owners and operators of stationary sources to keep records necessary to determine compliance with applicable portions of the control strategy.

exemption from construction permitting for stationary internal combustion engines (Part B, III.D.1.c(iii)), which is capped at 5 tons per year.

This in turn raises another issue. Section 110(l) of the Act provides that EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Due to the linked exemption from construction permitting, emissions of criteria pollutants and their precursors (such as, again, NO<sub>x</sub>) may increase as a result of the exemption from APEN requirements. For this reason, and for the reason that the provision appears to be unenforceable, EPA proposes to disapprove the addition of the exemption in A.II.D.1.sss to the SIP.

Similar issues are raised by the exemption in A-II.D.1.ttt. This provision exempts three tiers of emergency power generators from APEN requirements: (1) Those with a rated horsepower of less than 260; (2) those that operate no more than 250 hours per year and have a rated horsepower of less than 737; and (3) those that operate no more than 100 hours per year and have a rated horsepower of less than 1,840. For similar reasons to those discussed above, EPA regards the limitations on hours in tiers 2 and 3 as unenforceable and therefore proposes to disapprove subprovisions A-II.D.1.ttt.(ii) and A-II.D.1.ttt.(iii). Sources in tier 1, on the other hand, do not have a limit on hours of operation. However, as tier 1 includes generators up to 260 hp, emissions from these sources may be even greater than the emissions from the first tier stationary internal combustion engines discussed above. As with those engines,

this raises the issue of compliance with section 110(l) of the Act. EPA therefore proposes to also disapprove the exemption in A-II.D.1.ttt.(i).

EPA also proposes to disapprove the exemption in Section II.D.1.ffff., applicable to “Air Curtain destructors burning only yard waste, wood waste, and clean lumber, or any mixture thereof generated as a result of projects to reduce the risk of wildfire and are not located at a commercial or industrial facility.” The exemption does not apply to “[a]ir curtain incinerators that are considered incinerators as defined by the Common Provisions.” The exemption in II.D.1.ffff. was submitted to EPA on August 1, 2007.

Under the definition of “incinerator” in a subsequent revision to the Common Provisions of Colorado’s SIP, air curtain destructors that are subject to a New Source Performance Standard (NSPS) are considered “incinerators.” On December 16, 2005, EPA published a final rule (70 FR 74870) for NSPS and emission guidelines for new and existing “other” solid waste incineration units (OSWI). Under this rule, air curtain destructors (called air curtain incinerators in the rule) are subject to an NSPS. As a result, this exemption, II.D.1.ffff., is superseded. Additionally, Colorado has agreed that this exemption, II.D.1.ffff., is no longer valid and thus EPA is proposing disapproval.

APEN revisions submitted by the State to EPA between September 16, 1997 and August 1, 2007 include revisions to six provisions that EPA proposes to take no action on. The first revisions we propose to take no action on are: II.D.1.m; II.D.1.ee; II.D.1.uu; II.D.1.ddd; and II.D.1.eeee. EPA is

proposing to not act on these provisions in this **Federal Register** action, because EPA has already proposed approval of the repeal of these exemptions in a separate action published on July 21, 2010 (75 FR 42346). Additionally, EPA is not proposing action on the revision to APEN exemption II.D.1.uuu., because we proposed approval of the revision in the same July 21, 2010 proposal.

**VI. Proposed Action**

EPA is proposing partial approval and partial disapproval of 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 (to avoid having to evaluate revisions that may be significantly modified or even reversed in subsequent submittals), but for each provision compares 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. This approach allows EPA to evaluate, for each provision, the cumulative revisions submitted by the State on the dates specified above.

A comprehensive summary of the Colorado APEN provisions in Regulation Number 3, Part A, Section II, organized by EPA’s proposed rule action, is provided in Table 2 below. The APEN provision numbers are as codified in the August 1, 2007 submission.

**TABLE 2—LIST OF COLORADO APEN PROVISIONS (REQUIREMENTS AND EXEMPTION IN SECTIONS II.A THROUGH II.D OF PART A, REGULATION NUMBER 3) BY EPA PROPOSED RULE ACTION**

EPA’s proposed action	APEN provision number in August 1, 2007 submission
Approval—Substantially Revised Provisions .....	II.A; II.B.1.b; II.B.3; II.B.3.a; II.C.1.h; II.C.2.b.(ii); II.C.3.c; II.C.3.d; II.D.1; II.D.1.a; II.D.1.f; II.D.1.g; II.D.1.i; II.D.1.nn; II.D.1.oo; II.D.1.ccc; II.D.1.fff; II.D.1.lll; II.D.1.nnn. through II.D.1.qqq; II.D.1.rrr; II.D.1.vvv; II.D.1.www; II.D.1.yyy through II.D.1.dddd; II.D.4. through II.D.6.
Approval—Provisions with Clerical Revisions .....	II.B.1; II.B.2; II.B.4.a. through II.B.4.f; II.C. through II.C.1.a; II.C.2; II.C.2.b; II.C.2.b.(i); II.C.2.b.(iii). through II.C.3.b; II.D; II.D.1.h; 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.aaa; II.D.1.bbb; II.D.1.ggg; II.D.2; II.D.3.
Disapproval—Substantially Revised Provisions ..	II.D.1.q; II.D.1.sss; II.D.1.ttt; II.D.1.xxx; II.D.1.ffff.
No Action—EPA’s Prior Proposed Action .....	II.D.1.m; II.D.1.ee; II.D.1.uu; II.D.1.ddd; II.D.1.uuu; II.D.1.eeee.
No Action—Un-Revised Provisions .....	II.B; II.B.1.a; II.B.3.b; II.B.4; II.B.5; II.B.6; 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.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.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.vv. through II.D.1.zz; II.D.1.eee; II.D.1.hhh. through II.D.1.kkk; II.D.1.mmm.

In addition, EPA is proposing approval of certain other deletion and renumbering of APEN requirements. The provisions (using the numbering from the EPA-approved SIP, effective February 21, 1997) that are proposed for deletion are: II.B.8., II.B.10., and II.D.4.b. Deletion of the exemptions in II.D.4.b. makes the SIP more stringent, and deletion of the other provisions does not impact APEN requirements and exemptions, nor any other SIP provisions. EPA therefore proposes to approve these deletions. EPA's proposed approval of the renumbering of APEN requirements will be for 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. The renumbering of these provisions does not impact APEN requirements and exemptions, nor any other SIP provisions.

As indicated in the Background section of this action, for each of the APEN provisions in Regulation Number 3, Part A, Sections II.A. through II.D., EPA's TSD identifies the cumulative revisions (if any) submitted by the State between 1997 and 2007, provides its assessment of the revisions within the regulatory context referenced earlier in this action, and indicates EPA's proposed action (approval, no action, or disapproval.)

### VII. 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.

### 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.

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

Dated: January 13, 2011.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2011-1477 Filed 1-24-11; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 174

[Docket No. FRA-2011-0004]

#### Hazardous Materials: Improving the Safety of Railroad Transportation of Hazardous Materials

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Public Meeting.

**SUMMARY:** This notice announces that FRA has scheduled a public meeting in Washington, DC, to discuss its process of issuing movement approvals pursuant to Title 49 Code of Federal Regulations (CFR) 174.50. In an effort to continually improve this aspect of its safety program, FRA is undertaking a comprehensive review of its process of issuing movement approvals, and through this public meeting seeks to gain input from all persons and stakeholders affected or interested in this aspect of FRA's hazardous materials program.

**DATES:** The public meeting will be held on Tuesday, February 22, 2011, starting at 1 p.m.

**ADDRESSES:** The public meeting will be held at the DOT Conference Center, located at 1200 New Jersey Avenue, SE., Washington, DC 20590 in the Oklahoma Conference Room (Rooms A-B-C).

*Oral Presentations:* In order to ensure all interested parties are provided ample opportunity to speak at the meeting, any person wishing to present an oral statement should notify Mr. Karl Alexy, P.E., Engineer—Hazardous Materials, FRA Office of Safety Assurance and Compliance, at least 4 business days before the date of the public meeting. Mr. Alexy can be reached by e-mail at [Karl.Alexy@dot.gov](mailto:Karl.Alexy@dot.gov) or by phone at (202) 493-6245. For information on facilities or services for persons with disabilities, or to request special assistance at the meeting, contact Mr. Alexy as soon as possible.

FRA will make a teleconference line available for any interested party who wishes to attend the meeting by phone. Any interested party desiring to attend the meeting by phone should contact Mr. Alexy as soon as possible.

*Written Comments:* We invite interested parties who are unable to attend the meeting, or who otherwise desire to submit written comments or data, to submit any relevant information, data, or comments to the above-referenced docket (FRA-2011-