

CHAPTER 316

HEALTH AND ENVIRONMENT

HOUSE BILL 22-1372

BY REPRESENTATIVE(S) Carver, Boesecker, Catlin, Lindsay, Lynch, Michaelson Jenet, Ortiz, Pico, Ricks, Sandridge, Soper, Valdez D., Van Beber, Will;
also SENATOR(S) Gardner and Fields, Bridges.

AN ACT**CONCERNING AN EXEMPTION FROM AIR EMISSION LIMITS FOR THE USE OF A STATIONARY ENGINE TO SUPPORT CRITICAL INFRASTRUCTURE IN EMERGENCIES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 25-7-103, **add** (9.7) and (9.8) as follows:

25-7-103. Definitions. As used in this article 7, unless the context otherwise requires:

(9.7) "EMERGENCY EVENT" MEANS A SITUATION ARISING FROM A SUDDEN AND REASONABLY UNFORESEEN NATURAL DISASTER OR OTHER UNFORESEEN EVENT, INCLUDING THE LOSS OF UTILITY SERVICE, THAT REQUIRES THE USE OF EMERGENCY STATIONARY ENGINES TO ALLEVIATE A THREAT TO HEALTH, SAFETY, AND WELFARE PURSUANT TO 40 CFR 60 OR 63, AS IN EFFECT ON JANUARY 1, 2022. A THREAT TO HEALTH, SAFETY, AND WELFARE INCLUDES NATIONAL SECURITY THREATS.

(9.8) "EMERGENCY STATIONARY ENGINE" MEANS AN ENGINE THAT IS NOT MOBILE AND THAT IS USED TO PROVIDE ELECTRIC POWER TO OR MECHANICAL WORK FOR CRITICAL INFRASTRUCTURE DURING AN EMERGENCY EVENT.

SECTION 2. In Colorado Revised Statutes, **add** 25-7-143 as follows:

25-7-143. Emergency stationary engine exception - legislative declaration - rules. (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS THAT:

(I) THE UNITED STATES ARMED FORCES PROTECT THE UNITED STATES, INCLUDING

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

THE PEOPLE OF COLORADO, FROM THREATS DOMESTIC AND ABROAD;

(II) COLORADO IS HOME TO THE NORTH AMERICAN AEROSPACE DEFENSE COMMAND, U.S. STRATEGIC COMMAND, U.S. AIR FORCE SPACE COMMAND, AND U.S. NORTHERN COMMAND;

(III) THESE COMMAND AND MILITARY FACILITIES PLAY A CRITICAL ROLE IN AEROSPACE DEFENSE, INCLUDING DEFENSE AGAINST INTERCONTINENTAL BALLISTIC MISSILES AND WEAPONS OF MASS DESTRUCTION; AND

(IV) REGULATIONS PROMULGATED UNDER THE FEDERAL ACT AUTHORIZE EMERGENCY STATIONARY ENGINES TO OPERATE DURING AN EMERGENCY EVENT.

(b) THEREFORE, THE GENERAL ASSEMBLY HEREBY DECLARES THAT:

(I) MAINTAINING THE OPERATING CAPACITY OF COLORADO'S MILITARY FACILITIES IS CRITICAL TO PROTECTING THE HEALTH, SAFETY, AND WELFARE OF THE PEOPLE OF COLORADO;

(II) ALTHOUGH REGULATION OF EMISSIONS IS IMPORTANT TO THE HEALTH, SAFETY, AND WELFARE OF THE PEOPLE OF COLORADO, FAILURE TO MAINTAIN OPERATION AT ALL TIMES OF THESE CRITICAL FACILITIES DURING AN EMERGENCY EVENT COULD LEAD TO SEVERE LOSS OF LIFE AND DEVASTATING ENVIRONMENTAL CONSEQUENCES IN COLORADO;

(III) EMERGENCY STATIONARY ENGINES ARE CRITICAL TO PROVIDING POWER AND OTHER SERVICES NECESSARY TO MAINTAIN THE OPERATION OF THESE MILITARY FACILITIES AT ALL TIMES;

(IV) THIS SECTION IS SELF EXECUTING; AND

(V) CREATION OF AN EXEMPTION FOR EMERGENCY STATIONARY ENGINE USE AT MILITARY INSTALLATIONS REQUIRES A CHANGE TO COLORADO'S STATE IMPLEMENTATION PLAN, WHICH MUST BE APPROVED BY THE ADMINISTRATOR OF THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY.

(2) NOTWITHSTANDING ANY REQUIREMENTS OR EMISSION LIMITS ESTABLISHED BY STATE STATUTE OR RULE, A PERSON MAY OPERATE AN EMERGENCY STATIONARY ENGINE, AS AUTHORIZED BY THE FEDERAL ACT, IF:

(a) THE EMERGENCY STATIONARY ENGINE IS PROVIDING ELECTRIC POWER TO OR MECHANICAL WORK FOR MILITARY FACILITIES OR FACILITIES UNDER THE CONTROL OF THE UNITED STATES DEPARTMENT OF DEFENSE;

(b) THE EMERGENCY STATIONARY ENGINE IS IN COMPLIANCE WITH 40 CFR 60, SUBPARTS IIII AND JJJJ, AS IN EFFECT ON JANUARY 1, 2022;

(c) THE EMERGENCY STATIONARY ENGINE'S AIR POLLUTION CONTROL AND MONITORING EQUIPMENT IS INSTALLED, OPERATED, AND MAINTAINED IN COMPLIANCE WITH THE MANUFACTURER'S STANDARDS; AND

(d) THE EMERGENCY STATIONARY ENGINE IS:

(I) UNDERGOING ROUTINE MAINTENANCE OR TESTING; OR

(II) PROVIDING PRIMARY ELECTRICAL POWER OR MECHANICAL WORK DURING AN EMERGENCY EVENT PURSUANT TO 40 CFR 60 OR 63, AS IN EFFECT ON JANUARY 1, 2022, FOR THE DURATION OF THE EMERGENCY EVENT.

(3) (a) A PERSON THAT OPERATES AN EMERGENCY STATIONARY ENGINE AT MILITARY FACILITIES OR FACILITIES UNDER THE CONTROL OF THE UNITED STATES DEPARTMENT OF DEFENSE SHALL:

(I) MINIMIZE THE USE OF EMERGENCY STATIONARY ENGINES AS MUCH AS PRACTICABLE, CONSISTENT WITH THE HEALTH, SAFETY, AND WELFARE OF THE PEOPLE OF COLORADO;

(II) REPORT AN EMERGENCY EVENT TO THE DIVISION WITHIN THE LATER OF FORTY-EIGHT HOURS OR BY NOON ON THE NEXT BUSINESS DAY AFTER COMMENCING OPERATION OF AN EMERGENCY STATIONARY ENGINE BECAUSE OF THE EMERGENCY EVENT; AND

(III) EACH TIME AN EMERGENCY STATIONARY ENGINE IS OPERATED, RECORD:

(A) THAT THE EMERGENCY STATIONARY ENGINE WAS OPERATED;

(B) THE DATE THAT THE OPERATION BEGAN;

(C) THE DURATION OF THE OPERATION;

(D) THE REASON FOR EACH OPERATION, INCLUDING AN EMERGENCY EVENT, MAINTENANCE, OR TESTING; AND

(E) WHETHER ANY ACTION WAS TAKEN TO MITIGATE THE USE OF THE EMERGENCY STATIONARY ENGINE DURING THE EMERGENCY EVENT.

(b) A PERSON THAT INSTALLS AN EMERGENCY STATIONARY ENGINE SHALL RETAIN FOR FIVE YEARS AND MAKE AVAILABLE FOR INSPECTION THE INSTALLATION, MAINTENANCE, AND OPERATION RECORDS AND DATA OF THE EMERGENCY STATIONARY ENGINE, INCLUDING, AT A MINIMUM:

(I) MONITORING RESULTS;

(II) OPERATION AND MAINTENANCE PROCEDURES; AND

(III) OPERATION AND MAINTENANCE RECORDS.

(4) A PERSON THAT OPERATES AN EMERGENCY STATIONARY ENGINE AT MILITARY FACILITIES OR FACILITIES UNDER THE CONTROL OF THE UNITED STATES DEPARTMENT OF DEFENSE SHALL SUBMIT A COMPLIANCE REPORT TO THE DIVISION ANNUALLY ON THE DATE THE PERSON REGULARLY SUBMITS REPORTS IN ACCORDANCE WITH ANY PERMITS HELD BY THE PERSON. EACH COMPLIANCE REPORT MUST INCLUDE THE

FOLLOWING INFORMATION:

- (a) THE INSTALLATION NAME AND ADDRESS;
- (b) THE DATE OF THE REPORT AND THE BEGINNING AND END DATES OF THE REPORTING PERIOD;
- (c) THE INFORMATION REQUIRED TO BE RECORDED IN SUBSECTION (3)(a)(III) OF THIS SECTION;
- (d) ANY ACTION TAKEN TO MINIMIZE THE OPERATION OF THE EMERGENCY STATIONARY ENGINE; AND
- (e) A STATEMENT BY THE REPORTING PERSON, INCLUDING THE PERSON'S NAME, TITLE, AND SIGNATURE, CERTIFYING THE ACCURACY OF THE REPORT.

(5) COMPLIANCE WITH THIS SECTION IS A CONDITION OF EVERY AIR QUALITY PERMIT ISSUED OR RENEWED BY THE DIVISION FOR EMERGENCY STATIONARY ENGINES FOR MILITARY FACILITIES OR FACILITIES UNDER THE CONTROL OF THE UNITED STATES DEPARTMENT OF DEFENSE.

(6)(a) NO LATER THAN SEPTEMBER 1, 2022, THE GOVERNOR OR THE GOVERNOR'S DESIGNEE SHALL SUBMIT THIS SECTION TO THE ADMINISTRATOR FOR INCLUSION IN COLORADO'S STATE IMPLEMENTATION PLAN.

(b) THIS SECTION WILL TAKE EFFECT ONLY IF THE ADMINISTRATOR APPROVES THIS SECTION'S INCLUSION IN THE STATE IMPLEMENTATION PLAN. THE DIVISION SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING OF THE DATE ON WHICH THE CONDITION SPECIFIED IN THIS SUBSECTION (6)(b) HAS OCCURRED BY E-MAILING THE NOTICE TO REVISOROFSTATUTES.GA@STATE.CO.US. THIS SECTION TAKES EFFECT ON THE EFFECTIVE DATE IDENTIFIED IN THE NOTICE THAT THE ADMINISTRATOR APPROVED THIS SECTION'S INCLUSION IN COLORADO'S STATE IMPLEMENTATION PLAN OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES.

(7) IF THE ADMINISTRATOR FAILS TO APPROVE INCLUSION OF THIS SECTION INTO COLORADO'S STATE IMPLEMENTATION PLAN BY SEPTEMBER 1, 2025:

- (a) THIS SECTION IS REPEALED, EFFECTIVE OCTOBER 1, 2025; AND
- (b) THE GOVERNOR OR THE GOVERNOR'S DESIGNEE SHALL WITHDRAW THIS SECTION AS A STATE IMPLEMENTATION PLAN REVISION.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 2, 2022