



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2013-0552, FRL-9903-94-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Construction Permit Program Fee Increases; Construction Permit Regulation of PM_{2.5}; Regulation 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two State Implementation Plan (SIP) revision packages submitted by the State of Colorado on June 18, 2009 and May 25, 2011. EPA approves the June 18, 2009 submittal revisions, which supersede revisions submitted on June 11, 2008, to Regulation 3, Part A, Section VI.D.1., regarding construction permit processing fees. EPA approves Colorado's May 25, 2011 submittal, which addresses regulation of fine particulate matter (PM_{2.5}) under Colorado's construction permit program. EPA also approves minor editorial changes to Regulation 3, Parts A, B, and D in the May 25, 2011 submittal. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2013-0552. All documents in the docket are listed on the www.regulations.gov website. 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

either electronically through 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 (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6022, komp.mark@epa.gov.

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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 or initials APEN mean or refer to Air Pollution Emission Notice.

(iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection

Agency.

- (iv) The initials SIP mean or refer to State Implementation Plan.
- (v) The words State or Colorado mean the State of Colorado, unless the context indicates otherwise.
- (vi) The initials NAAQS mean or refer to national ambient air quality standards.
- (vii) The initials NSR mean or refer to New Source Review.
- (viii) The initials PM mean or refer to particulate matter.
- (ix) The initials PM_{2.5} mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
- (x) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (xi) The initials SIP mean or refer to State Implementation Plan.
- (xii) The initials tpy mean or refer to tons per year.

I. Background Information

On September 6, 2013, 78 FR 76781, EPA published a notice of proposed rulemaking (NPR) for action on certain SIP submittals by the State of Colorado. The NPR proposed approval of revisions to Regulation 3, Part A, Section VI.D.1. to the extent the revisions reflect changes to construction permit processing fees as set forth in Colorado Revised Statute Section 27-7-114.7.

In addition, the NPR proposed to approve revisions to Parts A of Regulation 3 to add PM_{2.5} to the definitions of “air pollutant” and “criteria pollutant,” and to approve revisions to Part B of Regulation 3 to regulate PM_{2.5} in the State’s construction permit program, including

PM_{2.5} thresholds. We also proposed to approve Colorado's reinstatement of volatile organic compound (VOC) sources to reasonably available control technology (RACT) requirements in Part B. Finally, minor editorial changes made throughout Regulation 3, Parts A, B, and D were proposed for approval.

The formal SIP revisions were submitted by the State of Colorado on June 11, 2008, June 18, 2009 and May 25, 2011. The State's June 11, 2008 and June 18, 2009 submittals contained permitting fee increases in Part A, Section VI.D.1. of Regulation 3. The State increased its fees with the 2008 submittal to \$17.97 per ton for regulated pollutants and \$119.96 per ton for hazardous air pollutants. In the State's 2009 submittal, these fees were increased to \$22.90 and \$152.10, respectively. Section VI.D.1. also requires permit processing fees to be collected. The 2009 submittal was adopted by the State on September 18, 2008 and became effective on October 30, 2008.

EPA determined that both submittals contain increased emission fees that appear to be for the purpose of implementing and enforcing the State's Title V operating permit program. These emission fee increases are non-SIP regulatory fees and therefore any increases are outside the scope of the SIP revision process. Conversely, the permit processing fees, with respect to the processing of construction permits, are appropriate for approval into the SIP. (see, CAA Section 110(a)(2)(L)(i)). Therefore, we are approving the submitted provisions only to the extent that they impose fees on processing of construction permits.

The May 25, 2011 submittal revised the definition of "air pollutant" in Part A of Regulation Number 3 to add PM_{2.5}. Consistent with EPA's 2008 PM_{2.5} New Source Review

(NSR) Implementation Rule (73 FR 28321), the submittal revised the definition of “criteria pollutant” in Part A to include PM_{2.5} and to recognize sulfur dioxide and nitrogen oxides as precursors to PM_{2.5}. With these changes, PM_{2.5} and its precursors are regulated under Colorado’s construction permit program in Part B of Regulation Number 3.¹

In areas which are nonattainment for any criteria pollutant, facilities with total annual uncontrolled emissions of PM_{2.5} less than one ton per year (tpy) are exempt; in areas that are in attainment for all criteria pollutants, facilities with total annual uncontrolled emissions of PM_{2.5} less than five tpy are exempt. These levels are identical to the existing PM₁₀ permit thresholds. The State also retained the existing thresholds for the pollutants identified as PM_{2.5} precursors, sulfur dioxide and nitrogen oxides: five tpy in areas which are nonattainment for any criteria pollutants, and ten tpy in areas that are in attainment for all criteria pollutants. The State adopted the revisions on February 21, 2008 and became effective on April 30, 2008. EPA proposed to approve these revisions to Parts A and B.

In addition, in paragraph III.D.2 of Part B, which contains RACT requirements for certain new or modified minor sources, Colorado added sources of VOCs. This responded to Colorado’s previous removal of these sources, which would have relaxed the stringency of the SIP. As Colorado’s reinstatement of VOC sources restores this provision to its previous state, we proposed to approve the change.

The cover letter to Colorado’s May 25, 2011 submittal identified the specific regulations

¹ On September 23, 2013 (78 FR 58186), we approved revisions to Colorado’s PSD program in Part D of Regulation Number 3 to address the requirements for PSD programs set out in the 2008 PM_{2.5} NSR Implementation Rule, including recognition of PM_{2.5} precursors in the definition of “regulated NSR pollutant.”

the State requested that EPA approve into the SIP, including minor editorial changes in Parts A, B, and D of Regulation 3. These parts of Colorado's Regulation 3 address the State's permitting and Prevention of Significant Deterioration (PSD) program. However, editorial changes were also made to Part C of the regulation. Part C is the State's Title V permitting program and is not part of the SIP. EPA takes no action on these non-SIP regulatory changes in Part C.

II. Response to Comments

EPA received no comments regarding our proposed approval of Colorado's revisions to its Regulation 3.

III. EPA's Evaluation of Part D Revisions to Regulation Number 3

The May 25, 2011 submittal contains revisions to the Part D portion of the State's Regulation 3 for major stationary sources subject to NSR and PSD. As discussed in earlier notices regarding revisions to Part D of Colorado's Regulation Number 3, for example 77 FR 1027 (Jan. 9, 2012), Colorado reorganized Regulation No. 3 in previous SIP submissions by moving much of the previously approved language from other sections of Regulation 3 into newly created Part D. The submissions then incorporated EPA's December 31, 2002 NSR Reform rule (67 FR 80186) into Part D, applying the reforms to both the State's PSD and nonattainment NSR permit programs. In its submissions, Colorado distinguished the revised language that incorporated NSR Reform from the language for the existing PSD and NSR programs (as reorganized into part D) by italicizing language that was to be added to the existing programs and by underlining language that was to be removed from the existing programs.

Colorado's submissions indicated that the addition of the italicized language and removal of the underlined language was to become effective only after EPA approved those changes into Colorado's SIP. The same convention regarding italicized and underlined language applies to the May 25, 2011 submittal.

EPA completed its approval of Colorado's NSR Reform revisions on April 10, 2012. 77 FR 21453. EPA also has also completed approval of subsequent revisions to Part D that renumbered Part D to reflect the removal of provisions that had been vacated or remanded by the U.S. Court of Appeals for the District of Columbia. 78 FR 5140 (Jan. 24, 2013). As a result, the italicized language in Part D is effective and the underlined language is removed. Our approval of editorial changes to Part D reflects this. In addition, on September 23, 2013, EPA approved more recent revisions to certain provisions in Part D. See 78 FR 58186 (Sept. 23, 2013). These provisions, addressing PM_{2.5} precursors and increments, were submitted by Colorado on May 11, 2012 and May 13, 2013, respectively. As those two submittals were made after the May 25, 2011 submittal we are approving today, the provisions we approved on September 23, 2013 already reflect and supersede the editorial changes made to the corresponding provisions in the State's May 25, 2011 submittal. We are therefore not reapproving those provisions already approved in our September 23, 2013 action.

In addition, in a previous final rule regarding Regulation Number 3, 76 FR 61054 (Oct. 3, 2011), we partially disapproved Colorado's SIP revisions for air pollutant emission notice (APEN) requirements and exemptions. In a subsequent submittal, dated May 11, 2012, Colorado repealed certain APEN provisions that we disapproved on October 3, 2011. As a result, we

consider those provisions effectively withdrawn from the May 25, 2011 submittal.

IV. Final Action

We are approving revisions to Regulation 3 as submitted on June 18, 2009, and May 25, 2011. EPA is approving permitting fee revisions in the June 18, 2009 submittal to Part A, Section VI.D.1. of Regulation 3, to the extent that the revisions apply to construction permits. The June 18, 2009 submittal supersedes the June 11, 2008 submittal, which also revised fee provisions.

The May 25, 2011 submittal revised the definition of “air pollutant” in Part A of Regulation Number 3 to add PM_{2.5} and the definition of “criteria pollutant” in Part A to include PM_{2.5} and to recognize sulfur dioxide and nitrogen oxides as precursors to PM_{2.5}. The submittal also added PM_{2.5} emission thresholds for exemptions from the construction permit requirements in Part B. In areas which are nonattainment for any criteria pollutant, facilities with total annual uncontrolled emissions of PM_{2.5} less than one tpy are exempt; in areas that are in attainment for all criteria pollutants, facilities with total annual uncontrolled emissions of PM_{2.5} less than five tpy are exempt. The State also retained the existing thresholds for the pollutants identified as PM_{2.5} precursors, sulfur dioxide and nitrogen oxides: five tpy in areas which are nonattainment for any criteria pollutants, and ten tpy in areas that are in attainment for all criteria pollutants.

In addition, in paragraph III.D.2 of Part B, which contains RACT requirements for certain new or modified minor sources, Colorado added sources of VOCs. EPA approves these revisions to Parts A and B.

The May 25, 2011 submittal included minor editorial changes in Parts A, B, and D of Regulation 3. We are approving these changes. For reasons discussed in the NPR, 78 FR 76871, EPA will not act on editorial changes made to Part C of the regulation. Part C is the State's Title V operating permit program and is not part of the SIP.

V. Statutory and Executive Orders Review

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 USC 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 USC 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 USC 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 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 USC 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 [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 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: November 8, 2013.

Howard M. Cantor,
Deputy 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 is amended by adding paragraph (c)(127) to read as follows:

§52.320 Identification of plan.

* * * * *

(c) * * *

(127) On June 11, 2008, June 18, 2009, and May 25, 2011 the State of Colorado submitted revisions to 5 CCR 1001-5, Regulation 3, Parts A, B, and D. The June 11, 2008 and June 18, 2009 submittals incorporated changes to fee amounts which the State charges for the processing and annual renewal of air emission permits. These fees support Colorado’s construction and operating permit programs. EPA is approving fees submitted by the State on June 18, 2009, which superseded changes submitted on June 11, 2008, to the extent that the fees support the construction permit program. EPA is also approving revisions made to 5 CCR 1001-5, Regulation 3, Parts A, B, and D submitted by the State on May 25, 2011 for Parts A, B and D.

(i) Incorporation by reference.

(A) 5 CCR 1001-5, Regulation Number 3, Stationary Source Permitting and Air Pollutant Emission Notice Requirements, Part A, Concerning General Provisions Applicable to Reporting and Permitting, VI. Fees, VI.D. Fee Schedule, VI.D.1.; adopted September 18, 2008 and effective October 30, 2008.

(B) 5 CCR 1001-5, Regulation Number 3, Stationary Source Permitting and Air Pollutant Emission Notice Requirements, Part A, Concerning General Provisions Applicable to Reporting and Permitting, except Section II., Air Pollutant Emission Notice (APEN) Requirements, II.D., Exemptions from Air Pollutant Emission Notice Requirements, Section II.D.1.sss, II.D.1.ttt, II.D.1.xxx, and II.D.1.fff; and Section VI., Fees, VI.D., Fee Schedule, VI.D.1., adopted February 21, 2008 and effective April 30, 2008.

(C) 5 CCR 1001-5, Regulation Number 3, Stationary Source Permitting and Air Pollutant Emission Notice Requirements, Part B, Concerning Construction Permits; adopted February 21, 2008 and effective April 30, 2008.

(D) 5 CCR 1001-5, Regulation Number 3, Stationary Source Permitting and Air Pollutant Emission Notice Requirements, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration; adopted February 21, 2008 and effective April 30, 2008:

(1) Excluding underlined text in Section II, Definitions, Section II.A.1., Actual Emissions, II.A.1.a., II.A.1.c., and II.A.1.e.; II.A.8., Best Available Control Technology (BACT), first paragraph; II.A.20., Lowest Achievable Emissions Rate (LAER), II.A.20.b.; II.A.22., Major Modification, introductory paragraph; II.A.24., Major Stationary Source, II.A.24.b.; II.A.26., Net Emissions Increase, II.A.26.a.(i) and II.A.26.g.(iii); II.A.40.5, Representative Actual Annual Emissions, introductory paragraph and II.A.40.5(a); and, VI. Requirements applicable to attainment and unclassifiable areas and pollutants implemented under Section 110 of the Federal Act (Prevention of Significant Deterioration Program), VI.A. Major Stationary Sources and Major Modifications, VI.A.1., Control Technology Review, VI.A.1.c.; and

(2) With the following exceptions: Section II, Definitions, Section II.A.5., Baseline Area, II.A.5.a. and II.A.5.b.; Section II.A.23., Major Source Baseline Date; II.A.25., Minor Source Baseline Date, II.A.25.a., II.A.25.b., introductory text, and II.A.25.b(i); II.A.38, Regulated NSR Pollutant, II.A.38.c.; II.A.42., Significant, II.A.42.a.; Section X, Air Quality Limitations, X.A., Ambient Air Increments, X.A.1.

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