



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2020-0110; FRL-10010-34-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Air Pollution Emission Notice Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions and renumbering submitted by the State of Colorado on May 8, 2019. Specifically, the EPA is proposing to approve amendments to Colorado's Stationary Source Permitting and Air Pollution Emission Notice Requirements in 5 CCR 1001-5, Regulation Number 3. The EPA is taking this action pursuant to sections 110 of the Clean Air Act (CAA).

DATES: *Comments:* Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2020-0110, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the 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 www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6227, leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

On May 8, 2019, the State of Colorado submitted a SIP revision containing amendments to 5 CCR 1001-5, Regulation Number 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements). Specifically, these amendments revised Part A, VI.C. (Annual

Emissions Fees) and VI.D. (Fee Schedule). These revisions are anticipated to cover revenue shortfalls and ensure continued program viability by increasing stationary source fees. The State of Colorado adopted these revisions on October 18, 2018, and they became State effective on November 30, 2018. We are proposing approval of all revisions submitted on May 8, 2019.

II. Analysis of State Submittal

We evaluated the State's May 8, 2019, submittal regarding revisions Regulation Number 3, Part A, Section VI.

1. VI.C.2:

A reference to Section VI.D.1 is being revised to VI.D.3 to coincide with revisions to VI.D.

2. VI.D.1:

For air pollution emission notice filing fees, the phrase “..shall be charged in accordance with and in the amounts and limits specified in the provisions of Colorado Revised Statutes Section 25-7-114.1” is being deleted and new phrase “shall be \$191.13” is being added.

We note that Colorado Revised Statutes Section 25-7-114.1 states:

“The maximum fee for filing an air pollution emission notice or amendment thereto under this section is one hundred ninety-one dollars and thirteen cents; except that, on each January 1 from 2019 to 2028, the maximum fee is automatically adjusted based on the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index. The commissioner shall set the actual fee by rule. Beginning on July 1, 2018, the commission, by rule, may periodically adjust the fee up to the maximum fee.”

The revision to VI.D.1 would make the maximum fee (\$191.13) the only filing fee for air pollution emission notices.

3. *VI.D.2:*

The new sentence “Permit processing fees shall be \$95.56 per hour” is added.

4. *VI.D.3:*

The phrase “Annual emission fees and permit processing fees shall be charged in accordance with and in the amounts and limits specified in the provisions of Colorado Revised Statutes Section 25-7-114.7.” is being deleted.

In addition, the phrase “Annual emission fees for regulated pollutants shall be \$22.90 per ton” is being revised to state: “Annual emission fees for regulated pollutants shall be \$28.63 per ton”; and the phrase “Annual emission fees for hazardous air pollutants shall be \$152.90 per ton” is being revised to state: “Annual emission fees for hazardous air pollutants shall be \$191.13 per ton.”

The new annual emission fees for regulated pollutants and hazardous air pollutants are the same as the maximum emission fees as stated in Colorado Revised Statutes Section 25-7-114.7.

III. The EPA’s Proposed Action

CAA Section 110(a)(2)(E) requires that a state implementation plan provide assurances that the state will have, among other items, adequate funding to carry out the implementation plan. Increasing the air pollution notice filing fee, permit processing fee and annual emission fees reflect both inflation and the increased complexity of permit to construct applications, thereby ensuring the State has adequate funding to carry out the implementation plan.

In this action, the EPA is proposing to approve SIP amendments to Colorado’s Regulation Number 3, shown in Table 1, submitted by the State of Colorado on May 8, 2019.

Table 1 - List of Colorado Amendments that the EPA is Proposing to Approve

Amended Sections in the May 8, 2019 Submittal Proposed for Approval
Regulation Number 3, Part A, Section VI.C: VI.C.2; Section VI.D: VI.D.1, VI.D.2, VI.D.3

IV. Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress (RFP) toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and public hearing.

The Colorado SIP revisions that the EPA proposes to approve do not interfere with any applicable requirements of the Act. Therefore, CAA section 110(l) requirements are satisfied.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the amendments described in sections II and III. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 (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 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

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

Dated: May 29, 2020.

Gregory Sopkin,
Regional Administrator,
Region 8.

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