ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–1025, FRL–9696–9]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions adopted by the State of Colorado on December 15, 2005, to Regulation No. 3 (Stationary Source Permitting and Air Pollutant Emission Notice Requirements.) Colorado submitted the request for approval of these rule revisions into the State Implementation Plan (SIP) on August 21, 2006. The revisions remove repealed provisions in Regulation No. 3 that pertain to the issuance of Colorado air quality permits; the revisions also implement other minor administrative changes and renumbering. The intended effect of this action is to propose to approve the rules that are consistent with the Clean Air Act (CAA.) This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before August 8, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–1025, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: leone.kevin@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 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–2011–1025. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 w*ww.regulations.gov* or email. The *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 email comment directly to EPA, without going through *www.regulations.gov*, your email 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 information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* 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 *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* 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: Kevin Leone, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, or *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

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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 *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 *State* or *Colorado* mean the State of Colorado, unless the context indicates otherwise.

I. Background for This Action

On December 31, 2002, EPA published revisions to the federal Prevention of Significant Deterioration (PSD) and non-attainment New Source Review (NSR) regulations. These revisions are commonly referred to as ''NSR Reform'' and became effective nationally in areas not covered by a SIP on March 3, 2003. The NSR Reform revisions included provisions for baseline emissions determinations, actual-to-future actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its decision and opinion in the case of *New York* v. *U.S. Environmental Protection Agency,* 413 F.3d 3 (D.C. Cir. 2005). The court concluded that, regarding the clean unit exemption from NSR, the plain language of the Clean Air Act indicated that Congress intended to apply NSR to changes that increase actual emissions instead of potential or allowable emissions. As a result, the court vacated the clean units portions of the NSR Reform rule. The court also concluded that EPA lacks the authority to create PCP exemptions from NSR and vacated the PCP portions of both the 1992 WEPCO Rule and the 2002 NSR Reform rule. By vacating those portions of the NSR Reform rule, the court terminated those exemptions to new

source review. The court also remanded back to EPA the ''reasonable possibility'' standard for when a source must keep certain project related records.

The State of Colorado submitted a formal SIP revision on July 11, 2005 followed by a supplemental submittal on October 25, 2005. These submittals requested approval for regulations to implement the NSR Reform provisions that were not vacated or remanded by the June 24, 2005 court decision; the submittals also included renumbering, reorganizing, and revised definitions. On April 10, 2012 (77 FR 21453), EPA published a notice of final rulemaking for the July 11, 2005 and October 25, 2005 submittals. In that action, EPA approved renumbering, reorganizing and portions of Colorado's revisions to the Stationary Source Permitting and Air Pollutant Emission Notice Requirements (Regulation No. 3) that incorporate EPA's December 31, 2002 NSR Reform; however, EPA considered as withdrawn the portions of the submittals that implemented the clean unit and PCP exemptions. EPA also approved a version of the recordkeeping requirements that removed the ''reasonable possibility'' standard.

Colorado adopted revisions on December 15, 2005, and submitted these revisions, which we are addressing in this action, on August 21, 2006. These revisions reflect the removal of references to clean units, pollution control projects, and the ''reasonable possibility'' standard from the State's rules. As a result of the deletion of these references, many provisions were renumbered and references to them updated. The submittal also included other minor administrative changes to Regulation No. 3. EPA is taking proposed action on these revisions in this notice.

II. What are the changes EPA is proposing to approve?

EPA is proposing to approve all revisions to Regulation No. 3 as submitted on August 21, 2006 which were not acted on in 77 FR 21453, April 10, 2012, relating to the removal of provisions that were vacated or remanded in the June 24, 2005 court decision, as well as renumbering and minor administrative changes.

In view of the D.C. Circuit court's June 24, 2005, decision, EPA concludes that there is no basis to retain the clean unit and PCP provisions in Regulation No. 3. The NSR Reform rule no longer allows operators to use those provisions to determine applicability of NSR to the source and Colorado law and the Colorado State Implementation Plan should be conformed to Federal law in this instance.

As part of the NSR Reform rule, EPA allowed sources to calculate their actual and projected actual emissions to determine whether a modification will trigger NSR. If a source concludes that there is no ''reasonable possibility'' that emissions from a project will trigger NSR, the source is not required to keep records substantiating that calculation. However, the data and records would necessarily be generated by the owner or operator to calculate its emissions.

Colorado did not follow the NSR Reform rule in this regard. In Section I.B.5., Colorado imposes a requirement that owners or operators using the actual-to-projected-actual applicability test for a project that requires a minor source permit or modification [pursuant to Part A, Section I.B.26.; Part C, Section I.A.3.; or Part C, Section X.; or any minor source permit under any provisions of Part B], submit an otherwise required permit application and include documentation adequate to substantiate calculations made for the test.

The D.C. Circuit court also addressed the recordkeeping and reporting requirements related to the ''reasonable possibility'' portions of the NSR Reform rule. The NSR Reform rule excused a source from maintaining records of the information and calculations used in the actual-to-projected actual applicability test if the source determined that there was no ''reasonable possibility'' that the modification would trigger NSR. These are the same records necessary to substantiate calculations made for the applicability test. The court concluded that lack of evidence, in the form of data and records, could inhibit enforceability of the NSR program in this context. The court remanded this part of the rule. On December 12, 2007, EPA published a final rule in response to the D.C. Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules (see 72 FR 70607) in which EPA clarified what constitutes ''reasonable possibility''. 72 FR 70607 established a ''percentage increase trigger'' by which there is a reasonable possibility that a change would result in a significant emissions increase if the projected emissions increase of a pollutant—determined by comparing baseline actual emissions to projected actual emissions—equaled or exceeded fifty percent of the applicable NSR significant level for that pollutant.

The State of Colorado requires sources retain records that, among other things, are essential to substantiate sources' calculations using the actual-to-projected-actual applicability test. Colorado also requires that a source submit its data and calculations along with a permit application that would otherwise be required for the physical or operational change. Colorado reviews the data and calculations only to confirm a source's conclusions whether it triggers NSR. The information submitted is then included in a non-enforceable appendix to a source's Title V Permit or as a permit note in the source's construction permit. Accordingly, Colorado elected not to modify Part D, Section I.B.5. and to modify Part D, Sections V.A.7.c. and VI.B.5. in a manner that maintains consistency with Section I.B.5. Part D, Sections V.A.7.c. and VI.B.5 were previously approved in 77 FR 21453. EPA proposes to find that the current Regulation No. 3 recordkeeping requirements are at least as stringent as in 72 FR 70607.

III. What action is EPA taking today?

Based on the above discussion, EPA proposes to find that removing vacated and remanded provisions from the June 24, 2005 court decision, renumbering, and other minor administrative changes meet applicable requirements of the Act; and thus, the revisions are approvable under CAA section 110. Therefore, we propose to approve Colorado's Regulation No. 3 revisions as submitted on August 21, 2006. Specifically, we propose to approve the deletion of the following sections from Regulation No. 3 and the renumbering associated with the deletion:

Part A, Section V.E.10.
Part A, Section V.E.11.
Part C, Section I.A.7.j.

EPA is acting only on the renumbering resulting from the deletion of the following provisions, as these provisions were considered withdrawn by the state in the 77 FR 21453 final rulemaking and were not approved into the SIP:

Part D, Section II.A.23.d.(viii)
Part D, Section II.A.27.c.(iv)
Part D, Section II.A.27.g.(v)
Part D, Section I.B.3.
Part D, Section I.B.4. (second sentence)
Part D, Section I.D.
Part D, Section II.A.11.
Part D, Section II.A.35.
Part D, Section XV.
Part D, Section XVI.

EPA is also approving the renumbering of Regulation No. 3, Part D, as submitted on August 21, 2006, including changes to references. These changes are detailed in the August 21, 2006 submittal (see docket.)

We are also affirming that the recordkeeping provisions in Regulation

No. 3 are at least as stringent as those required in the December 21, 2007, ''Reasonable Possibility'' rule.

IV. 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 proposed 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, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Incorporation by reference.

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

Dated: June 25, 2012.

Howard M. Cantor,

Acting Regional Administrator, Region 8.

[FR Doc. 2012–16721 Filed 7–6–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0021; FRL–9696–8]

Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; announcement of public hearing.

SUMMARY: EPA is announcing that a public hearing will be held on July 31, 2012 for the proposed rule, ''Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans'', which will be posted on EPA's Web site by July 5, 2012.

DATES: The public hearing will be held on July 31, 2012. See the Supplementary Information section for further details about the public hearing.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for hearing location.

FOR FURTHER INFORMATION CONTACT: If you have questions about the public hearing, please contact Thomas Webb, U.S. EPA, Region 9, phone (415) 947–4139, email *webb.thomas@epa.gov*. If you are a person with a disability under the ADA and require a reasonable accommodation for this event, please contact Philip Kum at *kum.philip@epa.gov* or at (415) 947–3566 by July 15, 2012.

SUPPLEMENTARY INFORMATION: Section 169A of the Clean Air Act (CAA) establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' Arizona has twelve mandatory Class I areas; several Class I areas in other states are also affected by emissions from Arizona facilities.

Regional haze is visibility impairment caused by the cumulative air pollutant emissions from numerous sources over a wide geographic area. EPA's proposed Regional Haze Federal Implementation Plan (FIP) for Arizona will address the requirements of the CAA and EPA's regional haze regulations pertaining to Best Available Retrofit Technology (BART) for three electric generating stations in Arizona: Apache Generating Station, Cholla Power Plant and Coronado Generating Station. EPA will propose to address other facilities and other elements of the Arizona SIP in a later action. The proposed rule, ''Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans'', will be available by July 5, 2012 on the following Web site: *http://www.epa.gov/region9/air/actions/arizona.html* and will subsequently be published in the **Federal Register**.

The proposed rule and information on which the proposed rule relies will also be available in the docket for this action. Generally, documents in the docket will be available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public hearing: EPA will hold a public hearing at the following date, time and location to accept oral and written comments into the record:

Date: July 31, 2012.

Time: Open House: 4:00–5:00 p.m.

Public Hearing: 6:00–8:00 p.m.

Location: Sandra Day O'Connor Federal Courthouse, in the atrium and juror room, 401 W. Washington Street, Phoenix, AZ 85003–2118.