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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2011-0685 ; FRL- 9726-4]

Approval and Promulgation of Air Quality Implementation Plans; Idaho; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials submitted by Idaho that are incorporated by reference (IBR) into the Idaho State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Idaho Department of Environmental Quality (IDEQ) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, D.C., and the EPA Regional Office.

EFFECTIVE DATE: This action is effective [insert Federal Register publication date].

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: EPA Region 10, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301

Constitution Avenue NW, Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, EPA Region 10, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Seattle, Washington 98101, or at (206) 553-6706.

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997, Federal Register document. On January 25, 2005, EPA published a document in the Federal Register beginning the new IBR procedure for Idaho. 70 FR 9450. Since the publication of the January 25, 2005, Federal Register document, EPA has approved regulatory changes to the Idaho Administrative Procedures Act (IDAPA)

58.01.01. These approved changes are identified in the following Federal Register notices:
70 FR 58311(October 6, 2005), 71 FR 39574 (July 13, 2006), 73 FR 44915 (August 1, 2008), 75
FR 72705 (November 26, 2010), 75 FR 72719 (November 26, 2010), 76 FR 33651 (June 9,
2011), 76 FR 36329 (June 22, 2011), and 77 FR 41916 (July 17, 2012).

II. EPA Action

In this action, EPA is doing the following:

A. In paragraph 52.670(b), announcing the update to the IBR material as of August 16, 2012.

B. In paragraph 52.670(c):

1. Removing the section heading “EPA-APPROVED IDAHO REGULATIONS” and adding in its place “EPA-APPROVED IDAHO REGULATIONS AND STATUTES”;

2. Correcting the entry for IDAPA 58.01.01.470 by removing “Permit Application Fees for Tier II Permits” and replacing it with “Reserved” consistent with our proposed action on March 18, 2010 (75 FR 13058) and our final action on November 26, 2010 (75 FR 72719); and

3. Removing the entries for IDAPA 58.01.01.726 through 729, consistent with our proposed action on March 18, 2010 (75 FR 13058) and our final action on November 26, 2010 (75 FR 72719).

C. In paragraph 52.683, revising the language to reflect the approvals made on July 17, 2012 (77 FR 41916), that were erroneously not reflected in paragraph 52.683.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 (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, 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.

B. Submission to Congress and the Comptroller General

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 rule 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. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Idaho SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in

this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for Idaho.

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 record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 27, 2012

Dennis J. McLerran
Regional Administrator
Region 10.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority for citation for part 52 continues to read as follows:

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

Subpart N - Idaho

2. Section 52.670 is amended by:

a. Revising paragraph (b); and

b. Amending the table in paragraph (c) by::

i. Removing the table heading “EPA-APPROVED IDAHO REGULATIONS” and adding in its place “EPA-APPROVED IDAHO REGULATIONS AND STATUTES”;

ii. Revising the entry for 470; and

iii. Removing entries 726 through 729.

The revisions read as follows:

§52.670 Identification of plan.

* * * * *

(b) Incorporation by reference. (1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the Federal Register. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after August 16, 2012, will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region 10 certifies that the rules and regulations provided by EPA at the addresses in

paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules and regulations which have been approved as part of the State implementation plan as of August 16, 2012.

(ii) EPA Region 10 certifies that the source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated source-specific requirements which have been approved as part of the State implementation plan as of August 16, 2012.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 10 Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Seattle, Washington 98101; For further information, call (206) 553- 6706; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue NW, Washington, DC 20460. For further information, call (202) 556-1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) EPA-approved regulations.

EPA- APPROVED IDAHO REGULATIONS AND STATUTES

State Citation	Title/Subject	State effective date	EPA approval date	Explanations

470.	Reserved.	5/22/03	11/26/10, 75 FR 72719	

3. Section 52.683 is amended by revising paragraph (a) to read as follows.

§52.683 Significant deterioration of air quality.

(a) The State of Idaho Rules for Control of Air Pollution in Idaho, specifically, IDAPA 58.01.01.005 through 007 (definitions), IDAPA 58.01.01.107.03.a, b, c, p, and q (incorporations by reference), IDAPA 58.01.01.200 through 222 (permit to construct rules), IDAPA 58.01.01.510 through 516 (stack height rules), and IDAPA 58.01.01.575 through 581 (standards, increments and area designations) except Section 577, are approved as meeting the requirements of title I, part C, subpart 1 of the Clean Air Act for preventing significant deterioration of air quality.

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