



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2013-0418, FRL-9907-30-Region 10]

Approval and Promulgation of Implementation Plans; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving the May 9, 2013, State Implementation Plan (SIP) submittal from Idaho to revise the SIP to update the incorporation by reference of Federal air quality regulations into the SIP and make minor edits and clarifications. The EPA is granting limited approval, as SIP strengthening, to a portion of the submittal that incorporates by reference updates to the Federal nonattainment new source review (nonattainment NSR) requirements that have been recently remanded to the EPA by a court. In addition, the EPA is partially disapproving Idaho's incorporation by reference of two provisions of the Federal prevention of significant deterioration (PSD) permitting rules that have been recently vacated in a separate decision by a court. Finally we are taking no action on Idaho's incorporation by reference of another provision of the Federal PSD permitting rules that has also been the subject of a court action. Upon the effective date of this action, the Idaho SIP will incorporate by reference certain Federal regulations as of July 1, 2012.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R10-OAR-2013-0418. All documents in the docket are listed on the

<http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which 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 <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT-107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at: (206) 553-6357, hall.kristin@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us” or “our” is used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

- I. Background
- II. Final Action
- III. Statutory and Executive Order Reviews

I. Background

Section 110 of the Clean Air Act (CAA) specifies the general requirements for states to submit SIPs to attain and maintain the National Ambient Air Quality Standards (NAAQS) and the EPA’s actions regarding approval of those SIPs. On May 9, 2013, the State of Idaho submitted a SIP revision to the EPA including regulatory changes adopted by Idaho on several

different dates. On January 10, 2014, the EPA proposed action on the May 9, 2013, submittal (79 FR 1795). An explanation of the CAA requirements and implementing regulations that are met by this SIP revision, a detailed explanation of the revision, and the EPA's reasons for the proposed action were provided in the notice of proposed rulemaking on January 10, 2014, and will not be restated here (79 FR 1795). The public comment period for the EPA's proposed action ended on February 10, 2014 and we received no comments.

II. Final Action

The EPA is partially approving the May 9, 2013, submittal from Idaho to update the incorporation by reference of Federal air quality regulations into the SIP and make minor edits and clarifications. Specifically, we are approving the revisions to IDAPA 58.01.01.107.03 "Incorporations by Reference," except as noted below; IDAPA 58.01.01.006 "General Definitions;" IDAPA 58.01.01.220 "General Exemption Criteria for Permit to Construct Exemptions;" and IDAPA 58.01.01.222 "Category II Exemption." The EPA is granting limited approval, as SIP strengthening, to a portion of the submittal that incorporates by reference updates to the Federal nonattainment NSR requirements at 40 CFR 51.165 that have been recently remanded to the EPA by a court.

We are partially disapproving the revision to IDAPA 58.01.01.107.03(c) as it relates to the incorporation by reference of specific vacated provisions at 40 CFR 52.21 (namely, 40 CFR 52.21(i)(5)(i)(c) and 40 CFR 52.21(k)(2)). We are taking no action on the revision to IDAPA 58.01.01.107.03(c) as it relates to the incorporation by reference of the vacated revision to 40 CFR 52.21(b)(49)(ii)(a). As of the effective date of this rule, the Idaho SIP will incorporate by reference specific Federal regulations as of July 1, 2012.

III. Statutory and Executive Order Reviews

Under the 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, the 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 this action does not involve technical standards; and does not provide the 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 the 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. The 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: 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, Incorporation by reference, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: February 11, 2014.

Dennis J. McLerran,
Regional Administrator
Region 10.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

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

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

Subpart N - Idaho

2. In §52.670:

a. The table in paragraph (c) is amended by revising entries 006, 107, 220, and 222.

b. The table in paragraph (e) is amended by adding an entry at the end of the table for “Idaho Department of Environmental Quality letter dated October 18, 2013 supplementing the May 9, 2013 SIP Submittal.”

The revisions and additions read as follows:

§ 52.670 Identification of plan.

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(c) * * *

EPA-APPROVED IDAHO REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01 - Rules for the Control of Air Pollution in Idaho				
* * * * *				
006	General Definitions	4/4/13, 3/30/07, 4/11/06, 7/1/02, 4/5/00, 3/20/97, 5/1/94	[Insert <u>Federal Register</u> publication date] [Insert page number where the document begins]	Except Section 006.49, 006.50, 006.51, 006.66, 006.67, and 006.68(b), 006.114, and 006.116.

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107	Incorporations by Reference	4/4/13, 10/6/10, 5/8/09, 3/30/07, 3/20/04, 7/1/97, 5/1/94	[Insert <u>Federal Register</u> publication date] [Insert page number where the document begins]	Except Section 107.03(f) through (m), and with respect to 107.03(c), its incorporation by reference of 40 CFR 52.21(i)(5)(i)(c), (k)(2), and the second sentence of (b)(49)(ii)(a).
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220	General Exemption Criteria For Permit To Construct Exemptions	4/4/13, 4/5/00	[Insert <u>Federal Register</u> publication date] [Insert page number where the document begins]	
* * * * *				
222	Category II Exemption	4/4/13, 4/11/06, 4/5/00, 5/1/94, 7/1/97	[Insert <u>Federal Register</u> publication date] [Insert page number where the document begins]	
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(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
* * * * *				
Idaho Department of Environmental Quality letter dated October 18,	State-wide	10/24/13	[Insert <u>Federal Register</u> publication	

2013 supplementing the May 9, 2013 SIP Submittal.			date] [Insert page number where the document begins]	
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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) (incorporations by reference)(except, with respect to Section 107.03(c), its incorporation by reference of 40 CFR 52.21(i)(5)(i)(c), (k)(2), and the second sentence of (b)(49)(ii)(a)), 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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