



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2016-0584; FRL-9960-43-Region 10]

Air Plan Approval; ID, Updates to Incorporations by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve, and incorporate by reference, portions of Idaho's April 28, 2016, State Implementation Plan submittal (SIP submittal) that update the incorporation by reference of federal air quality regulations. We note that this action does not address the changes Idaho withdrew related to transportation conformity requirements.

DATES: This rule is effective [insert date 60 days after date of publication in the Federal Register], without further notice, unless the EPA receives adverse comment by [insert date 30 days after date of publication in the Federal Register]. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2016-0584 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from 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>.

FOR FURTHER INFORMATION CONTACT: Randall Ruddick at (206) 553-1999, or ruddick.randall@epa.gov.

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

Table of Contents

- I. Background
- II. Analysis of Rule Updates
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Orders Review

I. Background

Section 110 of the Clean Air Act (CAA) governs the process by which a state submits air quality protection requirements to the EPA for approval into the State Implementation Plan (SIP). The SIP is the state’s plan to implement, maintain, and enforce National Ambient Air Quality Standards (NAAQS) set by the EPA. Idaho regularly updates the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) to reflect changes to the NAAQS and to improve implementation, maintenance, and enforcement of those standards. We note that Idaho

incorporates by reference portions of certain federal regulations directly into the SIP. The state generally submits an annual update to the EPA to keep rules consistent with federal requirements.

II. Analysis of Rule Updates

A. Incorporations by Reference

On April 28, 2016, Idaho submitted revisions to state air quality rules at IDAPA 58.01.01 to the EPA for approval into the SIP. Idaho revised section .03 of IDAPA 58.01.01.107 *Incorporations by Reference* by updating the citation dates that incorporate federal provisions and the effective dates of the incorporated federal provisions from July 1, 2014 to July 1, 2015. IDAPA 58.01.01.107.03.a incorporates by reference 40 CFR part 51, *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, with the exception of certain visibility-related provisions, effective as of July 1, 2015. We note that Idaho did not submit updates to the incorporation of federal provisions relied on as part of the State's nonattainment area major stationary source preconstruction permitting program.

IDAPA 58.01.01.03.b, .d, and .e incorporate the following provisions effective as of July 1, 2015: National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and Ambient Air Quality Surveillance, 40 CFR part 58. We find that paragraphs .b, .d, and .e are consistent with CAA requirements.

IDAPA 58.01.01.03.c incorporates the Approval and Promulgation of Implementation Plans, 40 CFR part 52, subparts A and N, and appendices D and E. This includes the federal Prevention of Significant Deterioration (PSD) permitting rules at 40 CFR 52.21 and 52.22, as

effective July 1, 2015. The EPA promulgated revisions to 40 CFR 52.21 and repealed 52.22 since July 1, 2015 in response to a court remand and vacatur. Specifically, on June 23, 2014, the United States Supreme Court, in *Utility Air Regulatory Group (UARG) v. EPA*,¹ issued a decision addressing the application of PSD permitting to greenhouse gas (GHG) emissions. The Supreme Court said the EPA may not treat GHGs as air pollutants for purposes of determining whether a source is a major source (or modification thereof) required to obtain a PSD permit. The Court also said the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limits on GHG emissions based on the application of Best Available Control Technology (BACT). In response to the *UARG* decision, and the subsequent Amended Judgment issued by the D.C. Circuit (Amended Judgment),² the EPA revised the federal PSD rules to allow for the rescission of PSD permits that are no longer required under these decisions, 80 FR 26183 (May 7, 2015), and to remove the regulatory provisions that were specifically vacated by the Amended Judgment, 80 FR 50199 (August 19, 2015) (removing 40 CFR 51.166(b)(48)(v), 52.21(b)(49)(v), 52.22, 70.12, and 71.13). In addition, the EPA has proposed to revise provisions in the PSD permitting regulations applicable to GHGs to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized. 81 FR 68110 (Oct. 3, 2016).

Idaho's adoption by reference of 40 CFR 52.21 and 52.22 as of July 1, 2015 included the May 7, 2015 revisions to 40 CFR 52.21(w),³ providing a mechanism for Idaho to rescind PSD

¹ 134 S.Ct. 2427 (2014).

² *Coalition for Responsible Regulation v. EPA*, Nos. 09-1322, 10-073, 10-1092, and 10-1167 (April 15, 2015).

³ Idaho's 2015 adoption by reference did not include the additional revisions to the permit rescission provisions in 40 CFR 52.21(w) published on November 7, 2016. 81 FR 78043. These revisions did not specifically relate to GHGs.

permits that are no longer required in light of *UARG* and the Amended Judgment, but did not include the August 19, 2015 revisions to the federal PSD program removing the PSD provisions vacated by the Amended Judgment. The Idaho SIP currently contains the vacated GHG provisions (through the incorporation by reference of a previous version of 40 CFR 52.21), so the EPA's approval of the CFR incorporation by reference update to July 1, 2015 does not change the Idaho SIP with respect to the vacated provisions. However, the now-vacated portions of 40 CFR 52.21 incorporated into the Idaho SIP-approved PSD program are no longer enforceable. The EPA believes this portion of the Idaho SIP should be revised in light of the D.C. Circuit's Amended Judgment, but the EPA also notes that these provisions may not be implemented even prior to their removal from the Idaho SIP because the court decisions described above have determined these parts of the EPA's regulations are unlawful. Further, Idaho has advised the EPA that it is not currently enforcing these provisions in light of the Supreme Court decision and that the Idaho Department of Environmental Quality has adopted an update to its incorporation by reference of the CFR, including the August 19, 2015 revisions to 40 CFR 52.21 and 52.22, which update awaits final approval by the Idaho Legislature, likely to occur in March of 2017. We are therefore approving paragraph .c with the understanding that the GHG provisions vacated by the court decisions cannot be implemented and are not being enforced by Idaho. We are also approving Idaho's revisions to IDAPA 58.01.01.03.a, .b, .d, and .e as described in this section.

B. Procedures and Requirements for Permits to Construct

Idaho revised IDAPA 58.01.01.200 *Procedures and Requirements for Permits to Construct* to clarify that the state incorporates the federal definitions of "major stationary source"

and “major modification” applicable in attainment and unclassifiable areas, in addition to the federal definitions of those terms applicable in nonattainment areas, effective as of the citation date in IDAPA 58.01.01.107, which is July 1, 2015. We are approving the clarification.

III. Final Action

The EPA is approving and incorporating by reference the following revisions to the Idaho SIP submitted on April 28, 2016:

- IDAPA 58.01.01.107 *Incorporations by Reference*, except .03.f through .p, and with respect to .a, the incorporation by reference of 40 CFR 51.165 (State effective March 25, 2016); and
- IDAPA 58.01.01.200 *Procedures and Requirements for Permits to Construct* (State effective March 25, 2016).

We note that this action does not address the changes to IDAPA 58.01.01.107.q, .563, and .564 related to transportation conformity requirements. Idaho withdrew these three revisions.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference as described in the amendments to 40 CFR part 52 set forth below. These materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference by the Director of the **Federal Register** in the

next update to the SIP compilation.⁴ The EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and/or at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble).

V. Statutory and Executive Orders Review

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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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.*);

⁴ 62 FR 27968 (May 22, 1997).

- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 [**insert date 60 days after date of publication 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: February 7, 2017.

Michelle L. Pirzadeh,
Acting Regional Administrator,
Region 10.

For the reasons set forth in the preamble, 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 N--Idaho

2. In §52.670, the table in paragraph (c) is amended by revising entries “107” and “200” to read as follows:

§52.670 Identification of plan.

* * * * *

(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				
*	*	*	*	*
107	Incorporation by Reference	3/25/2016, 3/20/2014, 3/30/2007, 7/1/1997, 5/1/1994	[insert date of publication in the Federal Register], [insert Federal Register citation]	Except Section 107.03.f through 107.03.p, and with respect to 107.03.a the incorporation by reference of 40 CFR 51.165
*	*	*	*	*

200	Procedures and Requirements for Permits to Construct	3/25/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	
*	*	*	*	*

* * * * *

[FR Doc. 2017-09542 Filed: 5/11/2017 8:45 am; Publication Date: 5/12/2017]