



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R10-OAR-2018-0214, FRL-9980-19-Region 10]**

### **Air Plan Approval; ID, Incorporations by Reference Updates and Rule Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve state implementation plan (SIP) revisions submitted by the Idaho Department of Environmental Quality (IDEQ) on March 20, 2018 and April 12, 2018. The submitted revisions update incorporation by reference (IBR) of Federal regulations in the Idaho's rules. The revisions also remove an interim regulation that expired in 2003.

**DATES:** 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-R10-OAR-2018-0214, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not electronically submit 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. 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](mailto:ruddick.randall@epa.gov).

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

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### **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. Idaho incorporates by reference (IBR) various portions of Federal regulations codified in the Code of Federal Regulations (CFR) into the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01). Idaho then submits parts of IDAPA 58.01.01 to the EPA for approval into the Federally-approved Idaho SIP (generally

those provisions that relate to the criteria pollutants regulated under section 110 of the CAA for which the EPA has promulgated NAAQS or other specific requirements of section 110).

To ensure that its rules remain consistent with the EPA requirements, Idaho generally updates the IBR citations in IDAPA 58.01.01 on an annual basis and submits a SIP revision to reflect any changes made to the Federal regulations during that year. Idaho's current SIP includes the approved incorporation by reference of specific Federal regulations, revised as of July 1, 2015, at IDAPA 58.01.01.107 "Incorporation by Reference." On March 20, 2018, the State of Idaho submitted SIP revisions to the EPA to account for more recent Federal regulatory changes adopted by Idaho.

Additionally, on April 12, 2018, Idaho submitted a separate SIP revision to remove an expired interim transportation conformity provision. Transportation conformity is required under section 176(c) of the CAA to ensure Federally supported highway, transit projects, and other activities are consistent with ("conform to") the purpose of the SIP.

## **II. EPA Evaluation of Idaho's SIP Revisions**

Idaho submitted several state dockets (rulemakings) for approval to the EPA. We note that the dockets also include revisions to Idaho's regulations relating to its Title V operating permits, hazardous air pollutants (referred to as "toxic air pollutants" in Idaho regulations), and other air requirements that do not implement section 110 of the CAA. Idaho submitted these regulations for informational purposes only, in order to provide a complete record of each docket. In the cover letter to the March 20, 2018, submittal, Idaho specifically stated that the

identified provisions (IDAPA 58.01.01.107.03.f-n) were not being submitted to update Idaho's SIP. We provide our analysis of the revisions below.

*A. 2016 Federal Rule IBR Update*

Docket 58-0101-1603 "2016 Federal Rule IBR" revises IDAPA 58.01.01.107.03 "Documents Incorporated by Reference" to update the citation dates for specific provisions incorporated by reference into the Idaho SIP as of July 1, 2016. Although Idaho requested approval of this docket, it has been superseded by the annual IBR update for 2017, described below. Therefore, we are acting on only the most recently adopted and submitted version of Idaho's regulations (namely, the 2017 Federal Rule IBR Update). Further action on this docket is not necessary because this version of Idaho's regulations is no longer in effect.

*B. 2017 Federal Rule IBR Update*

Docket 58-0101-1702 "2017 Federal Rule IBR Update" revises IDAPA 58.01.01.107 "Incorporations by Reference" to update the citation dates for specific provisions incorporated by reference in IDAPA 58.01.01.107.03 "Documents Incorporated by Reference" as of July 1, 2017. Subparagraph (a) of IDAPA 58.01.01.107.03 incorporates by reference the Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51, with the exception of certain visibility-related provisions, revised as of July 1, 2017. Importantly, Idaho's update to the incorporation by reference of 40 CFR part 51 includes nonattainment new source review (NNSR) requirements at 40 CFR 51.165.

Idaho has two designated PM<sub>2.5</sub> nonattainment areas: West Silver Valley 2012 annual PM<sub>2.5</sub> nonattainment area, and the Idaho portion of the Logan, Utah-Idaho 2006 24-hour PM<sub>2.5</sub>

nonattainment area. Idaho's incorporation by reference of 40 CFR 51.165 as of July 1, 2017, as referenced by IDAPA 58.01.01.204 Permit Requirements for New Major Facilities and Modifications in Nonattainment Areas, captures the EPA's 2016 rule changes to 40 CFR 51.165 promulgated under subpart 4, part D, of the Clean Air Act. See Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements; Final Rule (81 FR 58010, August 24, 2016).

As a result, Idaho's NNSR program now regulates the four precursors to PM<sub>2.5</sub> that have been recognized by the EPA, namely, nitrogen oxides, sulfur dioxide, volatile organic compounds, and ammonia. Therefore, EPA is proposing to fully approve the Idaho SIP as meeting current Federal NNSR requirements for all pollutants, including PM<sub>2.5</sub>.

Subparagraph (b) of IDAPA 58.01.01.107.03 incorporates by reference the National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50. The current Idaho SIP approved version of subparagraph (b) includes NAAQS revised as of July 1, 2015. On October 1, 2015, EPA signed a notice of final rulemaking revising the 8-hour primary and secondary ozone NAAQS (80 FR 65292; October 26, 2015). While both standards retain the same general form and averaging time (annual fourth-highest daily maximum 8-hour average concentration, averaged over three years<sup>1</sup>), the levels were lowered from 0.075 parts per million (ppm) to 0.070 ppm.<sup>2</sup> Idaho's 2017 Federal Rules IBR update changed the citation date in subparagraph (b) to July 1, 2017 and therefore reflects the current (October 2015) Federal NAAQS for ozone. Other

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<sup>1</sup> See 80 FR 65296 (October 26, 2015), for a detailed explanation of the calculation of the 3-year 8-hour average; see also 40 CFR part 50, Appendix U.

<sup>2</sup> These levels are commonly referred to in parts per billion (ppb): 75ppb and 70ppb, respectively.

than ozone, EPA has not revised any other NAAQS since July 1, 2015. We therefore propose to approve Idaho's revision to subparagraph (b) as consistent with Federal standards.

Subparagraph (c) of IDAPA 58.01.01.107.03 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 of July 15, 2017. The current Idaho SIP approved version of subparagraph (c) incorporates these Federal rules as effective July 1, 2015.

Since July 1, 2015, EPA promulgated revisions to 40 CFR 52.21 and repealed 52.22 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*, issued a decision addressing the application of PSD permitting to greenhouse gas (GHG) emissions. The Supreme Court said 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 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), 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). In addition, 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 incorporation 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), providing a mechanism for Idaho to rescind PSD 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. Idaho's March 20, 2018 SIP submittal updates the IBR citation date to July 1, 2017 and thereby encompasses the August 19, 2015 revisions to the Federal PSD program. The Idaho SIP will still contain some of the vacated GHG provisions (EPA has not finalized the actions proposed in 81 FR 68110), so EPA's approval of the Idaho's CFR incorporation by reference update to July 1, 2017 does not change the Idaho SIP with respect to the remaining vacated provisions. However, the remaining vacated portions of 40 CFR 52.21 incorporated into the Idaho SIP-approved PSD program are no longer enforceable.

EPA believes this portion of the Idaho SIP should be revised in light of the D.C. Circuit's Amended Judgment, but 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 EPA's regulations are unlawful. Further, Idaho has advised EPA that it is not currently enforcing these provisions in light of the Supreme Court decision. See 82 FR 22083, May 12, 2017. We are therefore proposing to approve subparagraph (c) with the understanding that the GHG provisions vacated by the court decisions cannot be implemented and are not being enforced by Idaho.

Subparagraphs (d) and (e) of IDAPA 58.01.01.107.03 incorporate by reference the following provisions revised as of July 1, 2017: (d) Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and (e) Ambient Air Quality Surveillance, 40 CFR part 58. These provisions relate to the criteria pollutants regulated under section 110 of title I of the CAA or other specific requirements of section 110 and make the Idaho SIP consistent with Federal law. The EPA is proposing to approve the revisions to IDAPA 58.01.01.107.03 (d) and (e).

### *C. Removal of Expired Rule*

Idaho submitted Docket 58-0101-1602 that repealed IDAPA 58.01.01.582 “Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM-10” (section 582) because it was outdated and no longer applicable. Section 582 was promulgated in 2001 as a temporary measure that was necessary only until a required maintenance plan could be developed to address CAA transportation conformity requirements for the PM10 Ada County nonattainment area. Idaho has since developed and adopted the required maintenance plan and EPA approved the maintenance plan on October 27, 2003 (68 FR 61106), effective November 26, 2003. Idaho repealed the expired section 582 (state effective March 28, 2017) and submitted the revision to EPA. EPA is therefore proposing to remove section 582 from Idaho’s SIP as requested by Idaho in its April 12, 2018 SIP submittal.

### **III. Proposed Action**

EPA is proposing to approve, and incorporate by reference where appropriate, in Idaho’s SIP all revisions to IDAPA 58.01.01.107 *Incorporations by Reference*, except .03.f through .p (state effective March 28, 2018) as requested by Idaho on March 20, 2018, and as described in

Section II.B. above.

EPA is also proposing, as requested by Idaho on April 12, 2018, to remove IDAPA 58.01.01.582 *Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM 10* from the Idaho SIP because it expired in 2003 and Idaho has repealed it as a matter of state law (state effective March 29, 2017). See Section II.C. (above).

We have made the preliminary determination that the submitted SIP revisions are consistent with section 110 and part C of Title I of the CAA.

#### **IV. Incorporation by Reference**

In this rule, EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the provisions described above in Section III. Also in this rule, EPA is proposing to remove, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to remove the incorporation by reference of IDAPA 58.01.01.582 as described in Section III. EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### **V. Statutory and Executive Orders Review**

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, the 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 proposed 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 it 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).

The proposed SIP would not be 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 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 20, 2018.

Michelle L. Pirzadeh,  
Regional Administrator,  
Region 10.

[FR Doc. 2018-14096 Filed: 6/28/2018 8:45 am; Publication Date: 6/29/2018]