



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0401, FRL-10012-52-Region 10]

Air Plan Approval; ID, Incorporation 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 Idaho on June 5, 2019 and May 27, 2020. The submitted revisions update the incorporation by reference of specific Federal requirements and clarify source permitting requirements. The EPA proposes to find that the changes are consistent with Clean Air Act requirements.

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-2019-0401, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. The 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 the disclosure of which 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-6357 or hall.kristin@epa.gov.

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

Table of Contents

- I. Background
- II. Evaluation of Submissions
- III. Proposed Action
- IV. Incorporation by Reference
- V. 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. Idaho incorporates by reference various portions of Federal regulations codified in the Code of Federal Regulations (CFR) into the Rules for the Control of Air Pollution in Idaho (Idaho Administrative Procedures Act (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 rulemakings remain consistent with EPA requirements, Idaho updates the incorporation by reference citations in IDAPA 58.01.01 on an annual basis and submits a SIP

revision to reflect any changes made to Federal regulations during that year. Idaho also makes periodic changes to permitting regulations for clarity or to improve implementation and submits the changes to the EPA along with the annual update SIP revision.

II. Evaluation of Submissions

On June 5, 2019 and May 27, 2020, Idaho submitted SIP revisions to update the incorporation by reference of Federal regulations. Idaho also submitted rule changes to clarify permitting requirements. This evaluation section discusses how the submitted rule revisions differ from the current Federally approved Idaho SIP and why the EPA believes the rule changes are approvable.¹ As such, our discussion focuses on the most recently submitted change to any particular rule provision.

A. Incorporation by Reference

The Idaho SIP incorporates by reference the following Federal regulations into the Idaho SIP (IDAPA 58.01.01.107.03.a through .e.):

- National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50;
- Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51, with the exception of certain visibility-related provisions;
- Approval and Promulgation of Implementation Plans, 40 CFR part 52, subparts A and N, and appendices D and E;
- Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and
- Ambient Air Quality Surveillance, 40 CFR part 58.

The submitted SIP revisions update the incorporation by reference citation date for these

¹ The EPA approved a portion of the June 5, 2019 SIP revision on December 9, 2019 (84 FR 67189). Specifically, we approved IDAPA 58.01.01.620 and Section 4 of Senate Bill 1024, codified at Idaho Code Section 39-114, state effective April 11, 2019.

provisions from July 1, 2017 to July 1, 2019. During this time period, there were no changes to 40 CFR parts 50, 53, and 58. There were, however, changes to the State-adopted portions of 40 CFR parts 51 and 52, specifically: a change to the Federal definition of volatile organic compounds²; updates to compliance test methods for air emissions sources³; additional requirements for ozone nonattainment areas and the ozone transport region⁴; corrections and updates to regulations to limit the interstate transport of nitrogen oxides⁵; and updates to the Idaho SIP codified at 40 CFR part 52, subpart N.⁶

We have reviewed the incorporation by reference updates and have determined that the effect of the updates is to keep the Idaho SIP consistent with minimum Federal requirements. Therefore, we propose to approve the submitted incorporation by reference updates.

B. Permit to Construct Program

The Federally approved Idaho Permit to Construct program is designed to regulate emissions from new and modified industrial sources. The submitted revisions align the Idaho SIP pre-construction permit requirements for sources of radionuclides with the pre-construction approval requirements in the National Emissions Standards for Hazardous Air Pollutants at 40 CFR part 61. Specifically, Idaho revised IDAPA 58.01.01.221 and .222 to make clear that a source must obtain an Idaho Permit to Construct if that source is required to get approval to construct under the Federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) for radionuclides, set forth at 40 CFR part 61, subpart H. Exemptions from pre-

² Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds - Exclusion of cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z), final rule published November 28, 2018 (83 FR 61127).

³ Testing Regulations for Air Emission Sources, final rule published November 14, 2018 (83 FR 56713).

⁴ Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements final rule published December 6, 2018 (83 FR 62998).

⁵ Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_x SIP Call, final rule published March 8, 2019 (84 FR 8422).

⁶ Idaho SIP codified at 40 CFR part 52, subpart N.

construction approval are spelled out in the NESHAP and the redundant exemption language in the Idaho regulations was removed. Idaho also removed the reference to radionuclides from the definition of “Significant” at IDAPA 58.01.01.006.108 because the NESHAP defines the applicability terms for the modification of sources of radionuclides.

The radionuclide provisions in these rule sections were approved into the Idaho SIP because they serve to identify which sources must obtain a Permit to Construct. We propose to approve the submitted changes because they are applicability provisions designed to remove confusion and improve program implementation. We are approving the revisions to the Permit to Construct program only to the extent that the rules apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under part C of title I of the CAA, but only for the purposes of meeting or avoiding the requirements of part C of title I of the CAA.

C. Non-Title V Operating Permit Program

The submitted revisions update a requirement in the Idaho Tier II (non-title V) operating permit program. Specifically, Idaho submitted a change to IDAPA 58.01.01.404.04 to make clear that a permittee must submit a complete application to the Idaho Department of Environmental Quality for a renewal of the terms and conditions establishing the Tier II operating permit at least six months before, but no earlier than eighteen months before, the expiration date of the existing permit. The submitted revisions are intended to make sure the permit does not expire before the terms and conditions are renewed. We propose to approve the changes.

D. Sulfuric Acid Plants

There are two facilities in Idaho with sulfuric acid plants, namely Itafos Conda and the JR

Simplot Don Plant. Both are subject to the Federal Standards of Performance for Sulfuric Acid Plants set forth at 40 CFR part 60 subpart H (NSPS subpart H). Idaho requested to remove outdated state emission limits for sulfuric acid plant from the SIP because the NSPS subpart H limits are more stringent. Idaho compared the emission limit in NSPS subpart H (4 pounds of sulfur oxides per ton of acid produced) to the emission limit in IDAPA 58.01.01.845 through .848 (28 pounds of sulfur oxides per ton of acid produced). Idaho requested to remove the Idaho SIP emission limit because it is less stringent than the NSPS subpart H limit. Idaho also noted any new sulfuric acid plant seeking to construct in Idaho would also be subject to NSPS subpart H and therefore the requirements in IDAPA 58.01.01.845 through .848 are unnecessary.

We have reviewed Idaho's request and agree that the emission limit in the NSPS subpart H is more stringent than the emission limit in the Idaho SIP and that the NSPS subpart H applies to existing and new sources in Idaho. Therefore, we propose to approve the State's request to remove IDAPA 58.01.01.845 through .848 from the Idaho SIP.

III. Proposed Action

The EPA is proposing to approve and incorporate by reference revisions to the Idaho SIP submitted on June 5, 2019, and May 27, 2020. Upon final approval, the Idaho SIP will include the following regulations:

- IDAPA 58.01.01.006.108, definition of "Significant" (State effective 4/11/2019);
- IDAPA 58.01.01.107, Incorporation by Reference, except section 107.03.f through 107.03.p (State effective 3/30/2020);
- IDAPA 58.01.01.221, Category I Exemption (State effective 4/11/2019);
- IDAPA 58.01.01.222, Category II Exemption (State effective 4/11/2019); and
- IDAPA 58.01.01.404, Procedure for Issuing Permits (State effective 4/11/2019).

The EPA is also proposing to approve Idaho's request to remove the following regulations from the Idaho SIP:

- IDAPA 58.01.01.845, Rules for Control of Sulfur Oxide Emissions from Sulfuric Acid Plants (State effective 5/1/1994);
- IDAPA 58.01.01.846, Emission Limits (State effective 4/5/2000);
- IDAPA 58.01.01.847, Monitoring and Testing (State effective 5/1/1994); and
- IDAPA 58.01.01.848, Compliance Schedule (State effective 4/5/2000).

IV. Incorporation by Reference

In this document, the 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, the EPA is proposing to incorporate by reference the provisions described in Section III of this preamble.

Also, in this document, the 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, the EPA is proposing to remove the incorporation by reference of IDAPA 58.01.01.845 through .848 as described in Section III of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. 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 Clean Air 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 application of the requirements would be inconsistent with the Clean Air Act; 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 proposed action does not apply on any Indian reservation land or in any other area in Idaho 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).

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: August 24, 2020.

Christopher Hladick,
Regional Administrator,
Region 10.