



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket #: EPA-R10-OAR-2013-0548; FRL – 9842-1]

Approval and Promulgation of Implementation Plans; Idaho: State Board Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Idaho for parallel processing on July 16, 2013, for purposes of meeting the state board requirements of the Clean Air Act (CAA). The EPA is also proposing to approve the submittal as meeting the corresponding state board infrastructure requirements of the CAA for the 1997 ozone National Ambient Air Quality Standards (NAAQS). If the final SIP revision submitted by the State to the EPA is consistent with the July 16, 2013, submittal, the State's SIP will, upon final approval, contain the required provisions regarding board composition and disclosure of potential conflicts of interest.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2013-0548, by any of the following methods:

- A. www.regulations.gov: Follow the on-line instructions for submitting comments.
- B. E-mail: R10-Public_Comments@epa.gov

- C. Mail: Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT-107),
1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- D. Hand Delivery: EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900,
Seattle WA, 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT
- 107. Such deliveries are only accepted during normal hours of operation, and
special arrangements should be made for deliveries of boxed information

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2013-0548. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI 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 in www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553-6357,

hall.kristin@epa.gov, or by using the above EPA, Region 10 address.

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

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I. Background

CAA section 128, titled “State Boards,” requires each SIP “to contain requirements that (1) any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any

significant portion of their income from persons subject to permits or enforcement orders under this chapter, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.” 42 U.S.C. 7428.

On July 18, 1997, the EPA issued a revised NAAQS for ozone.¹ This action triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of CAA section 110(a)(2) within three years of issuance of the new or revised NAAQS. CAA section 110(a)(2) includes a list of specific elements that each such plan submittal must meet, including section 110(a)(2)(E)(ii), which requires compliance with the state board requirements of CAA section 128.

On March 27, 2008, EPA issued a finding that the State of Idaho had failed to make a complete submittal to satisfy the requirements of CAA section 110(a)(2) for the 1997 ozone NAAQS (73 FR 16205). On September 15, 2008, the State of Idaho made a SIP submittal to the EPA for purposes of meeting the requirements of CAA section 110(a)(2) for the 1997 ozone NAAQS. On April 11, 2012, we proposed to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M) for the 1997 ozone NAAQS (77 FR 21702). In the notice, we stated that Idaho’s SIP submission did not address all of the requirements of CAA section 110(a)(2)(E)(ii), which requires that infrastructure SIPs meet the requirements of CAA section 128, and that we would address the requirements of CAA section 110(a)(2)(E)(ii) in a separate action (77 FR at 21710). On July 17, 2012, we took final action to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M) for the 1997 ozone NAAQS (77 FR 41916).

¹ The eight-hour averaging period replaced the previous one-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856).

II. The State's Submittal

On July 16, 2013, the State submitted a SIP revision² for purposes of meeting the state board requirements of CAA section 128 and the corresponding state board infrastructure SIP requirements for the 1997 ozone NAAQS. Specifically, the State submitted Executive Order 2013-06, dated June 26, 2013, and Idaho Code §§ 59-701 through 705, Ethics in Government Act, and requested parallel processing on the submittal. Under the parallel processing procedure, a State submits a SIP revision to the EPA before final adoption by the State. The EPA reviews this proposed State action and prepares a notice of proposed rulemaking. The EPA publishes its notice of proposed rulemaking in the Federal Register and solicits public comment in approximately the same time frame during which the State is completing its rulemaking action. For Idaho's SIP submittal, the State provided a schedule for finalizing the SIP revision, including public review and submittal of the final SIP package to the EPA. If changes are made to the SIP revision after this proposal, such changes will be described in the EPA's final rulemaking action and, if such changes are significant, the EPA may re-propose the action and provide an additional public comment period.

In this action, we are proposing to approve the July 16, 2013, submittal as meeting the requirements of CAA section 128 and CAA section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS, if the final SIP revision submitted by the State to the EPA is consistent with the July 16, 2013, submittal. The EPA's proposed determination that Idaho's SIP, as amended, meets the CAA section 128 requirements for purposes of CAA section 110(a)(2)(E)(ii) with respect to the 1997 ozone NAAQS is also applicable to CAA section 110(a)(2)(E)(ii) requirements for other infrastructure SIP submittals for Idaho. Our evaluation of the State's submittal is presented

² The letter accompanying the submittal was dated July 9, 2012.

below.

III. The EPA's Evaluation

A. Evaluation of Board Composition Requirements

Idaho Code § 39-107, Board – Composition – Officers – Compensation – Powers – Subpoena – Depositions – Review, was originally approved into the Idaho SIP on July 28, 1982 (47 FR 32530), and subsequently approved on January 16, 2003 (68 FR 2217). Idaho Code § 39-107(1)(a) establishes compositional requirements of the Idaho Board of Environmental Quality (Board), namely, that it consist of seven members who shall be appointed by the governor and further that:

Each member of the board shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector, and shall be appointed to assure appropriate geographic representation of the state of Idaho. No more than four (4) members of the board shall be from any one (1) political party. Two (2) members of the board shall be chosen with due regard to their knowledge of and interest in solid waste; two (2) members shall be chosen for their knowledge of and interest in air quality; two (2) members shall be chosen for their knowledge of and interest in water quality; and one (1) member shall be chosen with due regard for his knowledge of and interest in air, water and solid waste issues.

To meet the requirements of CAA section 128(a)(1), Idaho has submitted Executive Order 2013-06, dated June 26, 2013, which orders that “the appointment of members to the Idaho board of environmental quality shall be made in conformance with the requirements of Idaho Code section 39-107(1)(a), and section 128 of the Clean Air Act.” The EPA believes that Executive Order 2013-06 meets the requirements of CAA section 128(a)(1). Thus, if the final

SIP revision submitted by Idaho is consistent with the July 16, 2013, submittal, the EPA proposes to find that Idaho's SIP revision meets the requirements of that CAA section 128(a)(1) and the corresponding board infrastructure requirements of CAA section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS.

The EPA notes, however, that as provided in Idaho Code § 67-802, executive orders in Idaho cease to be effective four calendar years from the date of issuance unless an earlier termination date is specified in the order or unless the order is renewed by subsequent executive order. Because Executive Order 2013-06 does not specify an earlier termination date, it will expire on June 26, 2017, unless it is renewed by subsequent executive order. The EPA therefore notes that if Executive Order 2013-06 is not renewed, or if it is not replaced with legislation or some other legal authority meeting the requirements of CAA section 128(a)(1) and submitted to and approved by EPA as a SIP revision, Idaho's SIP will no longer meet the requirements of CAA section 128(a)(1). At that time, the EPA will consider appropriate action.

B. Evaluation of Disclosure Requirements

The July 16, 2013, submittal also includes the Idaho statutes governing disclosure of conflicts of interest for public officials, specifically, Idaho Code §§ 59-701 through 59-705, Ethics in Government. Idaho Code § 59-704 is the heart of these disclosure provisions and establishes required action in the case of conflicts of interest. That section provides that "A public official shall not take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest and has failed to disclose such conflict as provided in this section." Under Idaho Code § 59-703(10), "public official" is defined to include "any person holding public office of a governmental entity by virtue of formal appointment as required by law" and "any person holding public office of a

governmental entity by virtue of employment, or a person employed by a governmental entity on a consultive basis.” Thus, the disclosure requirements in Idaho Code § 59-704 apply to Board members and the Director of the Idaho Department of Environmental Quality (IDEQ). In conjunction with the definition of “official action” in Idaho Code § 59-703(1), the EPA believes that Idaho Code § 59-704 requires the disclosure of conflicts of interest by a member of the Board or the Director of the IDEQ in their approvals of permits and enforcement orders and is thus consistent with the requirements of CAA section 128(a)(2). Therefore, if the final SIP revision submitted by Idaho is consistent with the July 16, 2013, submittal, the EPA proposes to approve Idaho’s final SIP revision as meeting the requirements of CAA section 128(a)(2) and the corresponding board infrastructure requirements of CAA section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS.

IV. Proposed Action

Pursuant to CAA sections 110 and 128, if the final SIP revision submitted by Idaho to address the requirements of CAA section 128 is consistent with Idaho’s July 16, 2013, submittal, the EPA is proposing to approve Idaho’s SIP revision as meeting the requirements of CAA sections 128 and also the requirements of CAA section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS. This approval, once finalized, would also serve as a determination that Idaho meets the CAA section 128 requirements for purposes of CAA section 110(a)(2)(E)(ii) for other infrastructure SIP submittals for Idaho.

V. 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 the 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, and Reporting and recordkeeping requirements.

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

Dated: July 25, 2013.

Dennis J. McLerran,
Regional Administrator,
Region 10.

[FR Doc. 2013-18538 Filed 07/31/2013 at 8:45 am; Publication Date: 08/01/2013]