



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2013-0418, FRL- 9905-30-Region 10]

Approval and Promulgation of Implementation Plans; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve 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 proposing to grant 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 proposing to partially disapprove 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 proposing to take no action on Idaho's incorporation by reference of another provision of the Federal PSD permitting rules that has been the subject of a court action. Upon final action, the Idaho SIP would incorporate by reference certain Federal regulations as of July 1, 2012.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2013-0418, by any of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: R10-Public_Comments@epa.gov
- Mail: Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- 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-2013-0418. 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 docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., 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. 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 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:

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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. On May 9, 2013, the State of Idaho submitted a SIP revision to the EPA to account for regulatory changes adopted by Idaho on several different dates. 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, 2010, at IDAPA 58.01.01.107 “Incorporation by Reference.”

II. Analysis of State Submittal

A. Summary of Submittal

On May 9, 2013, Idaho submitted several state dockets (rulemakings) for approval by the EPA. We note that the dockets also include revisions to Idaho’s regulations relating to its title V operating permits program, hazardous air pollutants (referred to as “toxic air pollutants” in Idaho regulations), and other air quality-related requirements that do not implement section 110 of the CAA. Idaho submitted the revisions to these regulations for information purposes only, in order to provide a complete record of the rule revisions in each of the identified dockets. In the cover letter to the May 9, 2013, submittal Idaho specifically stated that the identified provisions were not being submitted to update Idaho’s SIP. Below, we describe the rule changes submitted to the EPA for approval and provide our analysis of the revisions.

1. PM_{2.5} PSD IBR Update

Docket 58-0101-1101 “PM_{2.5} PSD IBR” revises IDAPA 58.01.01.107.03 “Documents Incorporated by Reference” to add the EPA final rule for Prevention of Significant Deterioration for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels and Significant Monitoring Concentration (2010 PSD PM_{2.5} Implementation Rule) (October 20, 2010, 75 FR 64864) codified at 40 CFR parts 51 and 52. Idaho incorporated these Federal requirements by reference separately from its annual IBR update because the EPA’s final rule became effective after the State’s annual IBR update in 2010, but before its annual IBR update in 2011. Although Idaho requested approval of this docket, it has been superseded by the annual

IBR updates for 2011 and 2012, described below. Therefore, we are acting on only the most recently adopted and submitted version of Idaho's regulations (namely, the 2012 Federal Rule IBR Update). Further action on this docket is not necessary because this version of the regulations is no longer in effect.

2. 2011 Federal Rule IBR Update

Docket 58-0101-1103 "2011 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, 2011. Although Idaho requested approval of this docket, it has been superseded by the annual IBR update for 2012, described below. Therefore, we are acting on only the most recently adopted and submitted version of Idaho's regulations (namely, the 2012 Federal Rule IBR Update). Further action on this docket is not necessary because this version of the regulations is no longer in effect.

3. Housekeeping Revisions

Docket 58-0101-1201 "Housekeeping Revisions" revises IDAPA 58.01.01.006 "General Definitions" to clarify the definition of "Modification" with respect to the use of an alternative fuel or raw material, if the stationary source is specifically designed to accommodate such fuel or raw material before January 6, 1975 and use of such fuel or raw material is not specifically prohibited in a permit. The EPA is proposing to approve this revision because it has been clarified by adding the specific date of January 6, 1975, and aligns with the Federal definition of "major modification" at 40 CFR 51.166(b)(2)(i).

Docket 58-0101-1201 also revises the definition of "Significant" at IDAPA 58.01.01.006 "General Definitions" to include PM_{2.5}. Specifically, the revision defines a net emissions

increase or the potential of a source to emit PM_{2.5} as “significant” if the rate of emissions would equal or exceed 10 tons per year of direct PM_{2.5} emissions; or, with respect to specific precursors to PM_{2.5}, 40 tons per year of sulfur dioxide emissions, or 40 tons per year of nitrogen oxides emissions. The EPA is proposing to approve this revised definition because it is the same as the Federal definition of significant at 40 CFR 51.166(b)(23)(i).

Docket 58-0101-1201 also revises the definition of “Significant Contribution” in IDAPA 58.01.01.006 “General Definitions” to include an increase in ambient concentrations of PM_{2.5} which would exceed 0.3 micrograms per cubic meter, annual average, and 1.2 micrograms per cubic meter, twenty-four hour average. The EPA is proposing to approve this revision because it adopts the Federal “significant impact levels” for PM_{2.5} as set forth in 40 CFR 51.165(b)(2) and, as a definition, has a legal affect only as otherwise provided in regulations. As discussed in Section II.B.2 below, certain Federal regulations related to significant impact levels were recently vacated by a court. However, 40 CFR 51.165(b)(2) was not vacated and remains in effect. Please see Section II.B.2 for a detailed discussion.

It is important to note that since we most recently approved revisions to IDAPA 58.01.01.006 “General Definitions,” new definitions have been added at paragraphs (49), (50), (51), (66), (67), (114), and (116). As a result, the paragraphs in this section have been renumbered. We are not at this time acting on these new definitions because they were not part of the submittal, but we are proposing to approve the renumbering of the section to reflect the current paragraph numbers for “Modification” (68), “Significant” (106), and “Significant Contribution” (107), and for all previously approved definitions in this section.

The docket also makes minor changes to IDAPA 58.01.01.220 “General Exemption

Criteria for Permit to Construct Exemptions” and IDAPA 58.01.01.222 “Category II Exemptions” to clarify the applicability of these provisions. The revision to IDAPA 58.01.01.220 is approvable because it makes clear that an exemption under IDAPA 58.01.01.220 may be used by Category I sources if they meet the criteria in both IDAPA 58.01.01.221 and 223. Similarly, an exemption under IDAPA 58.01.01.220 may be used by Category II sources if they meet the criteria in both IDAPA 58.01.01.222 and 223. The revision to IDAPA 58.01.01.222 “Category II Exemptions” is approvable because it clarifies the additional criteria that a pilot plant in subparagraph (01)(e) must meet in order to satisfy the exemption criteria. Therefore, we are proposing to approve the submitted revisions to IDAPA 58.01.01.220 and IDAPA 58.01.01.222.

Finally, this docket revises IDAPA 58.01.01.792 “Emissions Standards for Nonmetallic Mineral Processing Plants Subject to 40 CFR 60 Subpart OOO” and IDAPA 58.01.01.794 “Permit Requirements” as they relate to nonmetallic mineral processing plant. Idaho submitted a previous version of IDAPA 58.01.01.792 and 58.01.01.794 to the EPA as a SIP revision, but the EPA has not yet taken action on that SIP revision. See 75 FR 72719 (November 26, 2010). The EPA intends to take action on both submitted revisions to IDAPA 58.01.01.792 and 58.01.01.794 in a separate rulemaking.

4. 2012 Federal Rule IBR Update

Docket 58-0101-1203 “2012 Federal Rule IBR Update” revises IDAPA 58.01.01.107 “Incorporations by Reference” in several ways. First, the revision updates to July 1, 2012 the citation dates of specific provisions incorporated by reference in IDAPA 58.01.01.107.03 “Documents Incorporated by Reference.” Second, the revision repeals certain provisions that are

no longer necessary to incorporate by reference. Finally, the revision adds the incorporation by reference of 40 CFR part 70 (State Operating Programs) and renumbers the subparagraphs in the rule.

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, 2012. Idaho's update to the incorporation by reference of 40 CFR part 51 includes nonattainment NSR requirements at 40 CFR 51.165. For the reasons discussed in Section II.B.1 below, the EPA is proposing to grant limited approval, as SIP strengthening, to the portion of Idaho's submittal that incorporates by reference updates to the Federal nonattainment NSR requirements at 40 CFR 51.165.

Subparagraphs (b) through (e) and (o) as renumbered, incorporate by reference the following provisions revised as of July 1, 2012: (b) National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; (c) Approval and Promulgation of Implementation Plans, 40 CFR part 52, including the Federal PSD permitting rules at 40 CFR 52.21; (d) Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; (e) Ambient Air Quality Surveillance, 40 CFR part 58; and (o) Determining Conformity of Federal Actions to State or Federal Implementation Plans, 40 CFR part 93, Subpart A, Sections 93.100 through 93.129, although certain subsections are specifically excluded from the State's incorporation by reference. 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, with the exceptions discussed in Section II.B.2 below, make the Idaho SIP consistent with Federal law. The EPA is proposing to approve the revisions to IDAPA 58.01.01.107.03 (b) through (e) and (o) as renumbered, with the

following exceptions. We are proposing to disapprove Idaho's incorporation by reference of two provisions of the Federal PSD permitting rules at 40 CFR 52.21 revised by the 2010 PSD PM_{2.5} Implementation Rule (October 20, 2010, 75 FR 64864). Provisions of this rule were recently vacated by a court, as discussed in Section II.B.2 below. We are also proposing to take no action on Idaho's incorporation by reference of a provision of 40 CFR 52.21 revised by the Biogenic Carbon Dioxide (CO₂) Deferral Rule that is currently the subject of a judicial challenge, as described in Section II.B.3 below (July 20, 2011, 76 FR 43490).

This docket also repealed subparagraphs (o), (p), and (q) (prior to renumbering) of IDAPA 58.01.01.107.03. Subparagraph (o) incorporated by reference the final rule for Primary National Ambient Air Quality Standards for Sulfur Dioxide, now codified at 40 CFR part 50, 40 CFR part 53, and 40 CFR part 58. Subparagraph (p) incorporated by reference the final rule for Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, now codified at 40 CFR part 51, 40 CFR part 52, and 40 CFR part 70. Subparagraph (q) incorporated by reference the 2010 PSD PM_{2.5} Implementation Rule, now codified at 40 CFR part 51 and 40 CFR part 52. Idaho's annual IBR update has since captured the CFR changes made by these three Federal rules, and Idaho has therefore repealed these subparagraphs. We are proposing to approve the repeal of IDAPA 58.01.01.107.03 subparagraphs (o), (p), and (q) (prior to renumbering).

Subparagraphs (f) through (m) of IDAPA 58.01.01.107.03 as renumbered, incorporate by reference the following provisions as of July 1, 2012: (f) Standards of Performance for New Stationary Sources, 40 CFR part 60; (g) National Emission Standards for Hazardous Air Pollutants, 40 CFR part 61; (h) National Emission Standards for Hazardous Air Pollutants for

Source Categories, 40 CFR part 63; (i) Compliance Assurance Monitoring, 40 CFR part 64; (j) State Operating Permit Programs, 40 CFR part 70; (k) Permits, 40 CFR part 72; (l) Sulfur Dioxide Allowance System, 40 CFR part 73; and (m) Protection of Stratospheric Ozone, 40 CFR part 82. Consistent with past approvals of the Idaho SIP, we are proposing to not approve the portion of the May 9, 2013, submittal that revises IDAPA 58.01.01.107.03(f) through (m) as renumbered, because these provisions implement other CAA requirements that are not requirements of a SIP under section 110 of the CAA.

B. Effect of Court Decisions Vacating and Remanding Certain Federal Rules

1. PM_{2.5} Nonattainment NSR Provisions

On January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council (NRDC) v. EPA*, 706 F.3d 428 (DC Cir.), issued a decision that remanded the EPA's 2007 and 2008 rules implementing the 1997 PM_{2.5} NAAQS. Relevant here, the EPA's 2008 implementation rule addressed by the Court decision, "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})" (the 2008 NSR PM_{2.5} Rule),¹ promulgated NSR requirements for implementation of PM_{2.5} in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). The Court concluded that the EPA had improperly based the implementation rule for the 1997 PM_{2.5} NAAQS solely upon the requirements of part D, subpart 1 of the CAA, and had failed to address the requirements of part D, subpart 4, which establishes additional provisions for particulate matter nonattainment areas. The Court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at 437. As a result of the Court's decision, the EPA

¹ 73 FR 28321 (May 16, 2008).

withdrew its guidance for implementing the 2006 PM_{2.5} NAAQS² because the guidance was based largely on the remanded rule promulgated to implement the 1997 PM_{2.5} NAAQS.³ The EPA is currently engaged in rulemaking to address the remand from the Court.

In the interim, however, states and the EPA still need to proceed with implementation of the PM_{2.5} NAAQS in a timely and effective fashion in order to meet statutory obligations under the CAA and to assure the protection of public health intended by those NAAQS. In light of the Court's remand of the 2008 NSR PM_{2.5} Rule, the EPA is not prepared at this time to grant full approval to Idaho's incorporation by reference into the Idaho SIP of the Federal nonattainment NSR requirements at 40 CFR 51.165, but instead proposes to grant limited approval, as SIP strengthening, of this aspect of Idaho's submittal.

The EPA is in the process of evaluating the requirements of subpart 4 as they pertain to nonattainment NSR. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM₁₀ precursors (and hence under the Court decision, PM_{2.5} precursors) "except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area." The evaluation of which precursors need to be controlled to achieve the standard in a particular area is typically conducted in the context of the State's preparing and the EPA's reviewing of an area's attainment plan SIP. In this case, there is only one designated PM_{2.5} nonattainment area in Idaho, the portion of Franklin County which is part of the cross border Logan, Utah-Idaho nonattainment area for the 2006 24-hour PM_{2.5} NAAQS. Idaho submitted an attainment plan for

²Memorandum from Stephen D. Page, Implementation Guidance for the 2006 24-Hour Fine Particulate (PM_{2.5}) National Ambient Air Quality Standards (Mar. 2, 2012).

³ Memorandum from Stephen D. Page, Withdrawal of Implementation Guidance for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (Jun. 6, 2013).

this area in Idaho (referred to here as “Franklin County”) on December 14, 2012. On December 26, 2013, the EPA proposed limited approval of the road sanding and woodstove control measures in this plan (78 FR 78315).

In light of the Court’s decision in *NRDC v. EPA*, and the need to evaluate Idaho’s submittal for Franklin County in conjunction with the SIP submittal for the Utah portion of the Logan Utah-Idaho nonattainment area, the EPA is not proposing to make a determination regarding whether Idaho’s December 2012 SIP submittal for Franklin County satisfies all of the statutory nonattainment planning requirements for the 2006 PM_{2.5} NAAQS. For similar reasons, and because the EPA is not evaluating in this action Idaho’s analysis as to which precursors need to be controlled in the Idaho portion of the Logan Utah-Idaho nonattainment area, the EPA cannot approve as fully complying with the CAA a nonattainment NSR SIP that may address only a subset of the scientific precursors recognized by the EPA. On the other hand, while we have not yet determined if Idaho’s submittal for Franklin County contains all of the elements necessary to satisfy the CAA requirements for PM_{2.5} nonattainment areas when evaluated under subpart 4, the revisions proposed in this action to 40 CFR 51.165 (including without limitation the regulation of PM₁₀ and PM_{2.5} condensable emissions) represent a strengthening of the currently approved Idaho SIP. Therefore, the EPA is proposing to grant limited approval of the nonattainment NSR provisions in Idaho’s 2012 IBR Update.

Because the EPA has not yet proposed revisions to the nonattainment NSR permitting requirements in response to the remand, the EPA is not evaluating at this time whether Idaho’s submittal for Franklin County will require additional revisions to satisfy the subpart 4 requirements. Once the EPA repromulgates the Federal PM_{2.5} regulations with respect to

nonattainment NSR permitting in response to the *NRDC v. EPA* remand, the EPA will consider whether a limited disapproval should also be finalized.⁴

2. PM_{2.5} PSD Provisions

As discussed above in Section II.A.4, IDAPA 58.01.01.107.03(c) incorporates by reference the Federal PSD permitting rules at 40 CFR 52.21. The current Idaho SIP incorporates 40 CFR 52.21 by reference as of July 1, 2010. Docket Number 58-0101-1203 updates the incorporation by reference date of the PSD permitting rules to July 1, 2012, and thus includes revisions to 40 CFR 52.21(i) (relating to the significant monitoring concentration (SMC)) and 40 CFR 52.21(k) (relating to the significant impact level (SIL)) that added a SMC and SIL for PM_{2.5} as part of the 2010 PSD PM_{2.5} Implementation Rule.

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, 703 F.3d 458 (D.C. Cir. 2013), issued, with respect to the SMC, a judgment that, inter alia, vacated the provisions adding the PM_{2.5} SMC to the Federal regulations at 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c). In its decision, the Court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for PM_{2.5} be included in all PSD permit applications. Thus, although the PM_{2.5} SMC was not a required element of a state's PSD program, where a state PSD program contains such a provision and allows issuance of new permits without requiring ambient PM_{2.5} monitoring data, such application of the vacated SMC would be inconsistent with the Court's opinion and the requirements of section 165(e)(2) of the

⁴ As discussed above, Idaho's submittal also includes revisions to the Idaho SIP to update the incorporation by reference of the Federal PSD permitting rule at 40 CFR 52.21. Because the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 NSR PM_{2.5} Rule that address requirements for PM_{2.5} attainment and unclassifiable areas (including PSD permitting rules) to be affected by the court's opinion in *NRDC v. EPA*.

CAA.

At the EPA's request, the decision also vacated and remanded to the EPA for further consideration the portions of the 2010 PSD PM_{2.5} Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for PM_{2.5}. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for PM_{2.5} because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the Federal Register publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. We also note that the Court's decision does not affect the PSD increments for PM_{2.5} promulgated as part of the 2010 PSD PM_{2.5} Implementation Rule. The EPA recently amended its regulations to remove the vacated PM_{2.5} SILs and SMC provisions from the PSD regulations (December 9, 2013, 78 FR 73698). The EPA will initiate a separate rulemaking in the future regarding the PM_{2.5} SILs that will address the Court's remand. In the meantime, the EPA is advising states to begin preparations to remove the vacated provisions from state PSD regulations.

In response to the vacatur of the EPA regulations as they relate to the PM_{2.5} SMC and the PM_{2.5} SILs, Idaho submitted a letter to the EPA, dated October 18, 2013, clarifying that it will not apply either the PM_{2.5} SMC provisions at 40 CFR 52.21(i)(5)(i)(c) or the PM_{2.5} SIL provisions at 40 CFR 52.21(k)(2) in Idaho's implementation of the PSD program. In addition, the October 18, 2013 letter states that Idaho intends to remove the vacated provisions to ensure consistency with Federal law as soon as practicable. Therefore, we are proposing to partially

disapprove the Idaho submittal with respect to the incorporation by reference at IDAPA 58.01.01.107.03(c) of the vacated provisions of 40 CFR 52.21 (namely, 40 CFR 52.21(i)(5)(i)(c) and 40 CFR 52.21(k)(2)).

3. PSD Deferral of Certain Emissions from Biogenic Sources

In 2011, the EPA revised the definition of “subject to regulation” at 40 CFR 52.21(b)(49)(ii)(a) to defer for three years (until July 21, 2014) PSD permitting requirements to CO₂ emissions from bioenergy and other biogenic stationary sources (Deferral for CO₂ Emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs; Final Rule (July 20, 2011, 76 FR 43490) (Biogenic CO₂ Deferral Rule). Idaho’s update to incorporate by reference the EPA’s PSD permitting rules as of July 1, 2012, includes this revision to 40 CFR 52.21(b)(49)(ii)(a). On July 12, 2013, the U.S. Court of Appeals for the District of Columbia, in *Center for Biological Diversity v. EPA*, No. 11-1101 (D.C. Cir. July 12, 2013), vacated the Biogenic CO₂ Deferral Rule. At this time, the Court has not issued the mandate in this case and the vacatur is therefore not in effect. In light of this situation, we are proposing to take no action on Idaho’s incorporation by reference of the revision to 40 CFR 52.21(b)(49)(ii)(a) at this time.

The EPA is proposing to approve all other aspects of Idaho’s incorporation by reference of 40 CFR 52.21 as of July 1, 2012 in IDAPA 58.01.01.107.03(c), other than those discussed in Sections II.B.2 and II.B.3 of this proposal.

III. Proposed Action

The EPA is proposing to partially approve 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 proposing to approve 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 proposing to grant 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 proposing to partially disapprove 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 proposing to take 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). Upon final action, the Idaho SIP would incorporate by reference specific Federal regulations as of July 1, 2012.

IV. 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, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: December 30, 2013.

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

[FR Doc. 2014-00274 Filed 01/09/2014 at 8:45 am; Publication Date: 01/10/2014]