

of CAA section 172(c)(3) and 40 CFR 51.915;

2. The reasonably available control measures demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.912(d);

3. The reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2) and 40 CFR 51.910;

4. The attainment demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.908;

5. The contingency measures for failure to make RFP or to attain as meeting the requirements of CAA section 172(c)(9); and

6. The motor vehicle emission budgets for the attainment year of 2008, which are derived from the attainment demonstration, as meeting the requirements of CAA section 176(c) and 40 CFR part 93, subpart A.

VI. 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 Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve 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 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 (Pub. L. 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 those requirements would be inconsistent with the Clean Air Act; and

- Does not provide 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 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 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, Ozone, Nitrogen Dioxide, Volatile Organic Compounds.

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

Dated: March 30, 2012.

Keith Takata,

Acting Regional Administrator, EPA Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2010-0724, FRL-9657-3]

Approval and Promulgation of Implementation Plans; Idaho: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Prevention of Significant Deterioration Greenhouse Gas Permitting Authority and Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submittals from the State of Idaho demonstrating that the Idaho SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. EPA is

proposing to find that the current Idaho SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). EPA is taking no action on CAA section 110(a)(2)(E)(ii) at this time. We will address the requirements of this sub-element in a separate action. EPA is also proposing to approve a SIP revision that applies Idaho's Prevention of Significant Deterioration (PSD) Program to greenhouse gas (GHG) emitting sources above certain thresholds, updates Idaho's SIP to incorporate by reference revised versions of specific federal regulations, and removes unnecessary language from the SIP due to the incorporation by reference of the federal NAAQS and PSD regulations. In addition, EPA is proposing to rescind the Federal Implementation Plan (FIP) put in place to ensure the availability of a permitting authority for greenhouse gas emitting sources in Idaho.

DATES: Comments must be received on or before May 11, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2010-0724, 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/Courier:* EPA Region 10, 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-2010-0724. 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 whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless

you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email 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, 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 EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, 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 whose disclosure 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 telephone number: (206) 553-6357, email address: hall.kristin@epa.gov, or the EPA Region 10 address located in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we”, “us” or “our” are used, we mean EPA. Information is organized as follows:

Table of Contents

- I. What action is EPA proposing?
- II. What is the background for the action that EPA is proposing?
 - a. Section 110(a)(1) and (2)
 - b. Greenhouse Gas (GHG) Component of PSD Programs
 - c. Annual Incorporation by Reference (IBR) of Federal Regulations
- III. What infrastructure elements are required under sections 110(a)(1) and (2)?
- IV. What is the scope of action on infrastructure submittals?
- V. What is EPA’s analysis of Idaho’s submittal?
- VI. Scope of Proposed Action
- VII. Proposed Action
- VIII. Statutory and Executive Order Reviews

I. What action is EPA proposing?

EPA is proposing to approve the State Implementation Plan (SIP) submittals from the State of Idaho demonstrating that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the “infrastructure” elements of section 110(a)(2). The Idaho Department of Environmental Quality (DEQ) submitted a certification to EPA on September 15, 2008, certifying that Idaho’s SIP meets the infrastructure obligations for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS. The certification included an analysis of Idaho’s SIP as it relates to each section of the infrastructure requirements with regard to the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS. Subsequently, on June 24, 2010, Idaho submitted an updated certification to EPA for CAA sections 110(a)(2)(D) and 110(a)(2)(G) for multiple NAAQS, including the 1997 8-hour ozone NAAQS. EPA is proposing to find that the Idaho SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). This action does not address infrastructure requirements with respect to the 1997 PM_{2.5} NAAQS which EPA intends to act on at a later time.

EPA is also proposing to approve portions of a SIP revision submitted by Idaho DEQ on June 20, 2011. This SIP revision includes updates to the incorporation by reference of certain federal regulations, changes to Idaho’s rules on the sulfur content of fuels, and revisions to sections of the Idaho SIP that have become unnecessary due to the incorporation by reference of federal NAAQS and PSD regulations. In this action, EPA is proposing to approve a portion of the June 20, 2011, SIP revision that applies Idaho’s Prevention of Significant Deterioration (PSD) Program to greenhouse gas (GHG) emitting sources at the emissions thresholds and in the same time frames as those specified in the PSD and Title V GHG Tailoring Final Rule (Tailoring Rule) (75 FR 31514, June 3, 2010). This proposed revision addresses the flaws discussed in EPA’s SIP call to states which found that several state SIPs, including Idaho’s, did not apply PSD to

GHG-emitting sources.¹ EPA subsequently issued a FIP which included Idaho.² Upon final approval of this GHG-related PSD program revision, EPA is proposing to rescind the FIP at 40 CFR 52.37 which provides for EPA to be the PSD permitting authority for GHG-emitting sources in Idaho.

EPA is also proposing to approve the portion of the June 20, 2011, revision that updates the incorporation by reference of the following regulations revised as of July 1, 2010: Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51; National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; Approval and Promulgation of Implementation Plans, 40 CFR part 52; Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and Ambient Air Quality Surveillance, 40 CFR part 58. EPA is also proposing to approve the addition of the incorporation by reference of the final rule for the Primary National Air Quality Standards for Sulfur Dioxide (75 FR 35520, June 22, 2010). EPA is not acting on the portions of the June 20, 2011, SIP revision that are not related to the criteria pollutants regulated under title I of the CAA or the requirements for SIPs under section 110 of the Act. Finally, EPA is proposing to approve the portions of the June 20, 2011, revision that remove language from the Idaho SIP that has become unnecessary due to Idaho’s incorporation by reference of the federal NAAQS at 40 CFR part 50 and the federal PSD regulations at 40 CFR 52.21. Specifically, EPA is proposing to approve the removal of the subsections of IDAPA 58.01.01.577 “Ambient Air Quality Standards for Specific Pollutants” that relate to pollutants for which EPA has promulgated a NAAQS, and which are now unnecessary because Idaho has incorporated the federal NAAQS by reference into the state SIP at IDAPA 58.01.01.107. EPA is also proposing to approve the changes to Idaho’s PSD regulations at IDAPA 58.01.01.581.01 to remove the increments table in its entirety, and to instead reference the federal PSD increment requirements contained in 40 CFR 52.21(c), which are incorporated by reference in the Idaho SIP at IDAPA 58.01.01.107. EPA is not acting on the revision to IDAPA 58.01.01.008 because

¹ Action to Ensure Authority to Issue Permits Under the PSD Program to Sources of GHG Emissions: Finding of Substantial Inadequacy and SIP Call (75 FR 77698, Dec. 13, 2010).

² Action to Ensure Authority to Issue Permits under the PSD Program to Sources of GHG Emissions: Federal Implementation Plan (75 FR 82246, Dec. 30, 2010).

it is related to Idaho's Tier I Operating Permit Program required under title V of the CAA and is not part of the SIP. In addition, EPA is not acting on the revision to IDAPA 58.01.01.751 because it is related to a non-criteria pollutant and is not part of the SIP. The proposed revisions to Idaho's rules for the sulfur content of fuels are not being acted on at this time. EPA intends to address the remainder of the June 20, 2011, SIP revision in a subsequent rulemaking.

II. What is the background for the action that EPA is proposing?

a. Section 110(a)(1) and (2)

On July 18, 1997, EPA promulgated a new NAAQS for ozone. EPA revised the ozone NAAQS to provide an 8-hour averaging period which replaced the previous 1-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).

The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called "infrastructure" requirements. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone standard created uncertainty about how to proceed, and many states did not provide the required infrastructure SIP submissions for the newly promulgated standard.

To help states meet this statutory requirement for the 1997 ozone NAAQS, EPA issued guidance to address infrastructure SIP elements under section 110(a)(1) and (2).³ This guidance provides that to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the

content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's federally-approved SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards.

b. Greenhouse Gas (GHG) Component of PSD Programs

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this action. Please see the preambles for these GHG-related actions for more background.

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for the proposed action on the Idaho SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action (74 FR 66496, Dec. 15, 2009), the "Johnson Memo Reconsideration" (75 FR 17004, Apr. 2, 2010), the "Light-Duty Vehicle Rule" (75 FR 25324, May 7, 2010), and the "Tailoring Rule" (75 FR 31514, June 3, 2010). Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

c. Annual Incorporation by Reference (IBR) of Federal Regulations

Idaho incorporates by reference various portions of Federal regulations codified in the Code of Federal Regulations (CFR). However, when a Federal regulation originally incorporated by reference into the Idaho SIP at IDAPA 58.01.01 on a specific date is subsequently changed, IDAPA 58.01.01 becomes out of date, and in some cases, inconsistent with the revised version of the Federal regulation. To avoid potential inconsistencies and keep IDAPA 58.01.01 up to date with changes in Federal regulations, Idaho submits a

revision to its SIP on an annual basis, updating the IBR citations in IDAPA 58.01.01 so they 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, 2008. In Idaho's June 20, 2011, SIP revision, the state has included the 2009 and 2010 annual IBR updates. The updates for the 2009 annual IBR update are superseded by the 2010 annual IBR update which revises the citation dates for specific federal regulations as of July 1, 2010.

III. What infrastructure elements are required under sections 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

EPA's October 2, 2007, guidance clarified that two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan

³ William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards." Memorandum to EPA Air Division Directors, Regions I-X, October 2, 2007.

requirements are due pursuant to CAA section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address infrastructure elements related to section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or 110(a)(2)(I).

This action also does not address the requirements of 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS which have been addressed by two separate actions issued by EPA. On November 26, 2010, EPA approved the SIP submittal from the Idaho Department of Environmental Quality to address provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS (75 FR 72705). The provisions approved in this action included three prongs of 110(a)(2)(D)(i): significant contribution to nonattainment of these NAAQS in any other state (prong 1); interference with maintenance of these NAAQS by any other state (prong 2); and interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality with respect to these NAAQS (prong 3). Subsequently, on June 22, 2011, EPA approved portions of a SIP revision submitted by Idaho as meeting the requirements of the fourth prong of CAA section 110(a)(2)(D)(i) as it applies to visibility for the 1997 8-hour ozone NAAQS (prong 4) (76 FR 36329, June 22, 2011).

This action also does not address the requirements of CAA section 110(a)(2)(E)(ii) regarding state boards. EPA will address the requirements of this sub-element in a separate action. Furthermore, EPA interprets the section 110(a)(2)(f) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C are not changed by a new NAAQS.

IV. What is the scope of action on infrastructure submittals?

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM_{2.5} NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP

submissions.⁴ The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule" (67 FR 80186, Dec. 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIP for the 1997 8-hour ozone NAAQS submittal from Idaho.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should

be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, that "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and PM_{2.5} NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the 1997 8-hour ozone infrastructure SIP for Idaho.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may

⁴ See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA-R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)” and that these SIPs are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as “infrastructure SIPs.” This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as “nonattainment SIP” submissions required to address the nonattainment planning requirements of part D, “regional haze SIP” submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.⁵ Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through

rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.⁶

Notwithstanding that section 110(a)(2) provides that “each” SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).⁷ This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general “infrastructure SIP” for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter “interstate transport” provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.⁸ This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state’s SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way,

⁶ For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state’s SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., “Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule” (70 FR 25162, May 12, 2005) (defining, among other things, the phrase “contribute significantly to nonattainment”).

⁷ See, e.g., 70 FR 25162 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

⁸ EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM_{2.5} NAAQS. See, “Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.⁹

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.*, the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements “as applicable.” In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and PM_{2.5} NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and

⁹ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

⁵ For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

the 1997 PM_{2.5} NAAQS.¹⁰ Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the “infrastructure” elements for SIPs, which it further described as the “basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.”¹¹ As further identification of these basic structural SIP requirements, “attachment A” to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended “to constitute an interpretation of” the requirements, and was merely a “brief description of the required elements.”¹² EPA also stated its belief that with one exception, these requirements were “relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.”¹³ For the one exception to that general assumption, however, *i.e.*, how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM_{2.5} NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State’s submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State’s SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure

SIPs for the 2006 PM_{2.5} NAAQS.¹⁴ In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS, but were germane to these SIP submissions for the 2006 PM_{2.5} NAAQS, *e.g.*, the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and PM_{2.5} NAAQS. Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director’s discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director’s discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA’s 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA’s proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the 1997 8-hour ozone infrastructure SIP for Idaho.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an

existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA’s 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a “SIP call” whenever the Agency determines that a state’s SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.¹⁵ Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹⁶

¹⁰ See, “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the “2007 Guidance”).

¹¹ *Id.*, at page 2.

¹² *Id.*, at attachment A, page 1.

¹³ *Id.*, at page 4. In retrospect, the concerns raised by commenters with respect to EPA’s approach to some substantive issues indicates that the statute is not so “self explanatory,” and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

¹⁴ See, “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),” from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the “2009 Guidance”).

¹⁵ EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,” 74 FR 21,639 (April 18, 2011).

¹⁶ EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule” (75 FR 82536, Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.*, 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona,

Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.¹⁷

V. What is EPA's analysis of Idaho's submittal?

The Idaho SIP submittal cites an overview of the Idaho air quality laws and regulations including portions of the Idaho Environmental Protection and Health Act (EPHA) and the Rules of the Control of Air Pollution in Idaho. Idaho Department of Environmental Quality (DEQ) annually updates and refers to EPA for incorporation by reference of all NAAQS and updates to 40 CFR part 51, Appendix W—Guidelines on Air Quality Models. The Idaho submittal addresses the elements of section 110(a)(2) as described below. A more detailed review and analysis of the Idaho infrastructure SIP elements is provided in the Technical Support Document (TSD), which is found in the docket for this proposed rulemaking.

110(a)(2)(A): Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means, or techniques, as well as schedules and timetables for compliance. EPA notes that the specific nonattainment area plan requirements of Section 110(a)(2)(I) are subject to the timing requirement of Section 172, not the timing requirement of Section 110(a)(1).

Idaho's submittal: The Idaho SIP submittal cites several laws and regulations including Idaho Code Section 39–105(3)(d) which provides Idaho DEQ with the broad power to

supervise and administer a system to safeguard air quality. In addition, Idaho Code Section 39–115 provides Idaho DEQ with specific authority for the issuance of air quality permits and to charge and collect permit fees. Rules relating to air quality permits are found at IDAPA 58.01.01.200 through 228, 300 through 399 and 400 through 410. Estimates of ambient concentrations are based on air quality models, databases and other requirements specified in 40 CFR part 51, Appendix W (Guideline on Air Quality Models). Idaho DEQ annually updates and refers to EPA for incorporation by reference of all national ambient air quality standards and updates to 40 CFR part 51, Appendix W. IDAPA 58.01.01.401.03 provides DEQ with the authority to require a Tier II permit if it determines emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increments. Specific requirements for major sources in attainment or unclassifiable areas are listed in IDAPA 58.01.01.202, 205, and 209. Specific requirements for major sources in nonattainment areas are listed in 58.01.01.202, 204, and 209. Federal NSR requirements are incorporated in both IDAPA 58.01.01.204 and 205. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: EPA most recently approved IDAPA 58.01.01.107, which incorporates by reference EPA regulations at 40 CFR part 50 for the National Primary and Secondary Ambient Air Quality Standards, revised as of July 1, 2008, on November 26, 2010 (75 FR 72719). We are proposing to concurrently approve the portion of the June 20, 2011, SIP revision which updates the incorporation by reference of 40 CFR part 50, 40 CFR part 51, 40 CFR part 52, 40 CFR part 53, and 40 CFR part 58 at IDAPA 58.01.01.107.03 as of July 1, 2010. Idaho has no areas designated nonattainment for the 1997 8-hour ozone NAAQS. Idaho regulates emissions of ozone and its precursors through its SIP-approved major and minor source permitting programs. Therefore, EPA is proposing to approve the Idaho SIP as meeting the requirements of section 110(a)(2)(A) for the 1997 8-hour ozone NAAQS.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA

guidance¹⁸ and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

In this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states may have such provisions that are contrary to the CAA and existing EPA guidance (52 FR 45109), November 24, 1987, and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision that is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient Air Quality Monitoring/Data System

Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request.

Idaho's submittal: The Idaho SIP submittal references IDAPA 58.01.01.107 and IDAPA 58.01.01.576.05 in response to this requirement. These rules incorporate by reference 40 CFR part 50 National Primary and Secondary Air Quality Standards, 40 CFR part 52 Approval and Promulgation of Implementation Plans, 40 CFR part 53 Ambient Air Monitoring Reference and Equivalent Methods, and 40 CFR part 58 Appendix B Ambient Air Quality Surveillance Quality Assurance Requirements for Prevention of Significant Deterioration. These rules give Idaho authority to implement ambient air monitoring surveillance systems in accordance with the requirements of referenced sections of the CAA.

Idaho DEQ collects and reports to EPA ambient air quality data for PM_{2.5}, PM₁₀, NO_x, CO, ozone and SO_x. These data are reviewed, verified and validated prior to being submitted to EPA's Air Quality System, or AQS, no later than 90 days from the end of the calendar quarter from which the data was collected. On July 1 of each year,

California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

¹⁷ EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

¹⁸ Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown." Memorandum to EPA Air Division Directors, August 11, 1999.

the previous year's ambient air monitoring data is certified by the Idaho DEQ Air Division Administrator as being true, accurate and complete.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR part 58 was submitted by Idaho to EPA on January 15, 1980 (40 CFR 52.670) and approved by EPA on July 28, 1982. This air quality monitoring plan has been subsequently updated, with the most recent submittal dated July 1, 2011. EPA approved the plan on September 6, 2011. This plan includes, among other things, the locations for the ozone monitoring network. Idaho makes this plan available for public review on Idaho DEQ's Web site at <http://www.deq.idaho.gov/air-quality/monitoring/monitoring-network.aspx>. The Web site also includes an interactive map of Idaho's air monitoring network. We are proposing to concurrently approve the portion of the June 20, 2011, SIP revision which updates the incorporation by reference of 40 CFR part 50, 40 CFR part 51, 40 CFR part 52, 40 CFR part 53, and 40 CFR part 58 at IDAPA 58.01.01.107.03 as of July 1, 2010. Based on the foregoing, EPA proposes to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 1997 8-hour ozone NAAQS.

110(a)(2)(C): Program for Enforcement of Control Measures

Section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

Idaho's submittal: The Idaho SIP submittal refers to Idaho Code Section 39–108 which provides DEQ with the authority to enforce both administratively and civilly the Idaho Environmental Protection and Health Act (EPHA), or any rule, permit or order promulgated pursuant to the EPHA. Criminal enforcement is authorized at Idaho Code Section 39–109. Emergency order authority, similar to that under section 303 of the CAA, is located at Idaho Code Section 39–112. The Idaho submission also refers to laws and regulations requiring stationary source compliance with the NAAQS discussed in their response to 110(a)(2)(A). Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: To generally meet the requirements of section 110(a)(2)(C), a state is required to have PSD, nonattainment NSR, and minor NSR

permitting programs adequate to implement the 1997 8-hour ozone NAAQS. As explained above, in this action EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the CAA. In addition, Idaho has no nonattainment areas for the 1997 ozone NAAQS.

EPA believes Idaho code provides DEQ with the authority to enforce the Idaho EPHA, air quality regulations, permits, and orders promulgated pursuant to the EPHA. Idaho DEQ staffs and maintains an enforcement program to ensure compliance with SIP requirements. Idaho DEQ may issue emergency orders to reduce or discontinue emission of air contaminants where air emissions cause or contribute to imminent and substantial endangerment. Enforcement cases may be referred to the state Attorney General's Office for civil or criminal enforcement. EPA therefore proposes to approve the Idaho SIP as meeting the requirements of 110(a)(2)(C) related to enforcement for the 1997 8-hour ozone NAAQS.

EPA most recently approved revisions to Idaho's PSD program on November 26, 2010 (75 FR 72719). Idaho's PSD program includes NOx as a precursor for ozone. However, EPA previously noted that Idaho's PSD program had a deficiency because the state did not have the authority to implement the PSD permitting program with respect to GHG emissions (75 FR 77698, Dec. 13, 2010). Since that time, Idaho undertook rule revisions and submitted a SIP revision to EPA on June 20, 2011, which addresses this deficiency. The Idaho SIP revision includes an update to the state's incorporation by reference of federal PSD program regulations at 40 CFR part 52, including 40 CFR 52.21, as of July 1, 2010, and adds a new incorporation by reference of the Tailoring Rule because it became effective after the July 1, 2010, citation date. These federal rules are incorporated by reference into Idaho rules at IDAPA 58.01.01.107.03. As a result of EPA's approval of the SIP revision, Idaho's SIP will apply to GHG emitting sources as specified in the amended definition of "subject to regulation" in 40 CFR 52.21(b)(49). Idaho's SIP will also phase in PSD program applicability to sources at the emissions thresholds and time frames laid out in the Tailoring Rule. In this action EPA is proposing to approve the portion of Idaho's June 20, 2011, SIP revision to apply Idaho's PSD program to greenhouse gas emitting sources at the emissions thresholds and in the same time frames as those specified in

the Tailoring Rule. In conjunction with this proposed approval of Idaho's PSD program for GHG-emitting sources, EPA is proposing to rescind the FIP at 40 CFR 52.37 which provides for EPA to be the PSD permitting authority for GHG-emitting sources in Idaho. As a result, EPA is proposing to approve Idaho's SIP as consistent with the requirements of element 110(a)(2)(C) as it relates to PSD for the 1997 8-hour ozone NAAQS.

In this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR Reform requirements for major sources. EPA most recently approved changes to Idaho's NSR program, including NSR Reform, on November 26, 2010 (75 FR 72719). In addition, EPA has determined that Idaho's minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of ozone and its precursors. In this action, EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

Based on the foregoing, EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 1997 8-hour ozone NAAQS.

110(a)(2)(D): Interstate Transport

Section 110(a)(2)(D) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

As noted above, this action does not address the requirements of 110(a)(2)(D)(i) for the 8-hour ozone

NAAQS which have been addressed by two separate findings issued by EPA on November 26, 2010 (75 FR 72705) and June 22, 2011 (76 FR 36329). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

EPA analysis: EPA most recently approved revisions to Idaho's PSD program on November 26, 2010 (75 FR 72719). Idaho's PSD regulations provide for notice consistent with the requirements of the EPA PSD program. Idaho issues notice of its draft permits and neighboring states consistently receive copies of those drafts. The state also has no pending obligations under section 115 or 126(b) of the Act. EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA Section 110(a)(2)(D)(ii) for the 1997 8-hour ozone NAAQS.

110(a)(2)(E): Adequate Resources

Section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under CAA Section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

Idaho's submittal: The Idaho SIP submittal addresses 110(a)(2)(E)(i) regarding adequate personnel, funding and authority and refers to specific Idaho statute including Idaho Code Section 39-106 which gives the Idaho DEQ Director the authority to hire personnel to carry out duties of the department. In addition, Idaho Code 39-105 lays out the powers and duties of Idaho DEQ's director and gives the director the power to utilize any federal aid and grants. Finally, Idaho Code Section 39-107B establishes the Department of Environmental Quality Fund which receives appropriated funds, transfers from the general fund, federal grants, fees for services, permitting fees and other program income.

With regard to the state boards requirements under CAA Section 128, Idaho indicated in its submission that the state's Board of Environmental Quality, established pursuant to Idaho Code Section 39-107, meets the requirements of Section 128. Idaho refers to the State's Ethics in Government Act of 1990 at Idaho Code Section 59-701, et seq. which lays out the ethics requirements for public officials including acting in the public interest, disclosure of conflicts of interest, and procedures for excusing board members where conflicts exist.

With regard to assurances that the state has responsibility for ensuring adequate implementation of the plan where the state has relied on local or regional government agencies, DEQ addressed the agreements with locals on nonattainment plans. On certain nonattainment plans, DEQ has entered into agreements for local implementation and enforcement of measures such as wood stove and street sweeping ordinances. When DEQ relies on local enforcement it also is able to enforce the local ordinance under its own authorities. For instance, failure to street sweep when required may constitute a violation of the requirement to control fugitive dust, IDAPA 58.01.01.650-651. If a resident failed to comply with a woodstove ordinance, then DEQ could issue the resident a Tier II permit and enforce the ordinance terms then included in the permit. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: EPA is proposing to find that the above-listed laws and regulations provide Idaho DEQ with adequate authority and resources to carry out SIP obligations with respect to the requirements of CAA section 110(a)(2)(E)(i) for the 1997 8-hour ozone NAAQS. EPA is also proposing to find that Idaho has provided necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of the SIP with regards to the 1997 8-hour ozone NAAQS. Therefore EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(E)(i) and (E)(iii) for the 1997 8-hour ozone NAAQS. Idaho's SIP submission did not address all of the requirements of CAA Section 128, specifically the provision which requires a SIP to specify that a board or body which approves permits or enforcement orders under the CAA to 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 the CAA. EPA is taking no action on CAA section 110(a)(2)(E)(ii) at this time and will address these requirements in a separate action.

110(a)(2)(F): Stationary Source Monitoring System

Section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

Idaho's submittal: The Idaho SIP submittal states that DEQ's air quality permits are practically enforceable and contain requirements to (i) install, maintain and replace equipment, (ii) monitor emissions, and (iii) submit reports. IDAPA 58.01.01.121 provides authority to Idaho DEQ to require monitoring, recordkeeping and periodic reporting where sources may violate air quality provisions, orders or rules. In addition, the Idaho DEQ may issue information orders including requirements to conduct emissions monitoring, record keeping, reporting and other requirements. IDAPA 58.01.01.157 specifies test methods and procedures for source testing and reporting to the Idaho DEQ. Records are available for public inspection under Idaho's Public Records Act. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: The provisions cited by Idaho's SIP submittal provide authority for monitoring, recordkeeping and reporting requirements for sources subject to major and minor source permitting. EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA Section 110(a)(2)(F) for the 1997 8-hour ozone NAAQS.

110(a)(2)(G): Emergency Episodes

Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

Idaho's submittal: The Idaho SIP submittal cites Idaho Code 39–108 which provides emergency order authority comparable to that in CAA Section 303. In addition, the Idaho submittal cites several Idaho regulations that comprise Idaho's Air Pollution Emergency Rules (IDAPA 58.01.01.550–562) the purpose of which is “to define criteria for an air pollution emergency, to formulate a plan for preventing or alleviating such an emergency, and to specify rules for carrying out the plan.” Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: As noted in EPA's October 2, 2007, guidance, the significant harm level for the 8-hour ozone NAAQS shall remain unchanged at 0.60 ppm ozone, 2-hour average, as indicated in 40 CFR 51.151. EPA believes that the existing ozone-related provisions of 40 CFR 51 Subpart H remain appropriate. Idaho's regulations listed above, which were previously approved by EPA on January 16, 2003 (68 FR 2217), continue to be consistent with the requirements of 40 CFR 51.151. Accordingly, EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 1997 8-hour ozone NAAQS.

110(a)(2)(H): Future SIP Revisions

Section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

Idaho's submittal: The Idaho SIP submittal refers to Idaho Code Section 39–105(3)(d) which provides DEQ with the broad authority to revise rules, in accordance with Idaho administrative procedures for rulemaking, to meet national ambient air quality standards as incorporated by reference in IDAPA 58.01.01.107. Idaho also refers to provisions cited in their submittal related to permitting at CAA Section 110(a)(2)(A) discussed above to demonstrate that the Idaho SIP satisfies this requirement. Please see the TSD in the docket for this action for a detailed

description of the above-referenced Idaho provisions.

EPA analysis: EPA finds that Idaho has adequate authority to regularly update the state SIP to take into account revisions of the NAAQS and other related regulatory changes. In practice, Idaho regularly submits SIP revisions to EPA in order to revise the SIP for recent federal regulatory changes. EPA most recently approved revisions to Idaho's SIP on November 26, 2010 (75 FR 72719). Accordingly, EPA is proposing to approve the Idaho SIP as meeting the requirements of section 110(a)(2)(H) for the 1997 8-hour ozone NAAQS.

110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in section 110(a)(2) not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time of the nonattainment area plan requirements pursuant to section 172. These requirements are: (i) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address infrastructure elements related to section 110(a)(2)(C) with respect to nonattainment NSR or section 110(a)(2)(I).

110(a)(2)(J): Consultation With Government Officials

Section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121. Section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, section 110(a)(2)(J) requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection.

Idaho's submittal: The Idaho SIP submittal cites laws and regulations relating to public participation processes for SIP revisions and permitting programs. Idaho DEQ consults with other state agencies, local agencies, and nongovernmental organizations, as well as with the environmental agencies of other states

regarding air quality issues. Idaho refers to Idaho Code Section 39–105.03(c) which promotes outreach with local governments and Idaho Code Section 39–129 which provides authority for Idaho DEQ to enter into agreements with local governments. In addition, Idaho refers to its transportation conformity rules, and states that Idaho DEQ generally incorporates by reference the federal PSD and Nonattainment new source review programs. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: Idaho's SIP includes specific provisions for consulting with local governments and Federal Land Managers as specified in CAA section 121, including the Idaho rules for major source PSD permitting and Tier II operating permits. Idaho DEQ routinely coordinates with local governments, states, federal land managers and other stakeholders on air quality issues and provides notice to appropriate agencies related to permitting actions. Idaho regularly participates in regional planning processes including the Western Regional Air Partnership which is a voluntary partnership of states, tribes, federal land managers, local air agencies and the US EPA whose purpose is to understand current and evolving regional air quality issues in the West. Therefore, EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 1997 8-hour ozone NAAQS.

Idaho actively participates and submits information to EPA's AIRNOW and Enviroflash Air Quality Alert programs. Idaho also provides the daily air quality index to the public on their Web site at <http://www.deq.idaho.gov/air/aqindex.cfm>, as well as measures that can be taken to prevent exceedances. Therefore, EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) for public notification for the 1997 8-hour ozone NAAQS.

Turning to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, EPA has evaluated this requirement in the context of section 110(a)(2)(C) with respect to permitting. EPA most recently approved revisions to Idaho's PSD program on November 26, 2010 (75 FR 72719). Idaho's PSD program regulates NO_x as a precursor for ozone. Idaho has no nonattainment areas for the 1997 8-hour ozone standard. EPA believes that, conditioned upon the finalization of the

rescission of the GHG FIP and approval of the SIP revision pertaining to the application of PSD permitting to the specified GHG sources that is part of this action, Idaho's SIP meets the requirements of CAA section 110(a)(2)(j) for PSD for the 1997 8-hour ozone NAAQS. As referenced in the analysis for section 110(a)(2)(C), EPA previously noted that Idaho's PSD program had a deficiency because the state did not have the authority to implement the PSD permitting program with respect to GHG emissions (75 FR 77698, Dec. 13, 2010). Since that time, Idaho undertook rule revisions and submitted a SIP revision to EPA on June 20, 2011, a portion of which addresses this deficiency. The Idaho SIP revision includes an update to the state's incorporation by reference of 40 CFR part 52, including federal PSD program regulations at 40 CFR 52.21 as of July 1, 2010, and adds a new incorporation by reference of the Tailoring Rule because it became effective after the July 1, 2010 citation date. These federal rules are incorporated by reference into Idaho rules at IDAPA 58.01.01.107.03. As a result, Idaho's SIP will apply to GHG emitting sources as specified in the amended definition of "subject to regulation" in 40 CFR 52.21(b)(49). In this action EPA proposes to approve the portion of Idaho's June 20, 2011, SIP revision to apply Idaho's PSD program to GHG emitting sources at the emissions thresholds and in the same time frames as those specified in the Tailoring Rule. In conjunction with this proposed approval of Idaho's PSD program for GHG-emitting sources, EPA is proposing to rescind the FIP at 40 CFR 52.37 which provides for EPA to be the PSD permitting authority for GHG-emitting sources in Idaho. As a result, EPA is proposing to approve the Idaho SIP as meeting the requirements of section 110(a)(2)(j) with regard to PSD for the 1997 8-hour ozone NAAQS.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new visibility obligation triggered under section 110(a)(2)(j) when a new NAAQS becomes effective.

Based on the above, EPA is proposing to approve the Idaho SIP as meeting the requirements of section 110(a)(2)(j) for the 1997 8-hour ozone NAAQS.

110(a)(2)(K): Air Quality and Modeling/ Data

Section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Idaho's submittal: Air quality modeling is conducted during development of revisions to the SIP, as appropriate for the state to demonstrate attainment with required air quality standards. Modeling is also addressed in Idaho's source permitting process as discussed at Section 110(a)(2)(A) above. Estimates of ambient concentrations are based on air quality models, data bases and other requirements specified in 40 CFR 51, Appendix W (Guidelines on Air Quality Models) which is incorporated by reference under IDAPA 58.01.01.107.03. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: EPA previously approved Idaho regulations on air quality modeling into the SIP. EPA most recently approved IDAPA 58.01.01.107, which incorporates by reference EPA regulations at 40 CFR part 51, Appendix W (Guidelines on Air Quality Models) revised as of July 1, 2008, on November 26, 2010 (75 FR 72719).

We are proposing to concurrently approve the portion of the June 20, 2011, SIP revision which updates the incorporation by reference of 40 CFR part 50, 40 CFR part 51, 40 CFR part 52, 40 CFR part 53, and 40 CFR part 58 at IDAPA 58.01.01.107.03 as of July 1, 2010, as previously discussed above. While Idaho has no nonattainment areas for ozone, Idaho has submitted modeling data to EPA related to other pollutants. For example, Idaho submitted to EPA the PM₁₀ Maintenance Plan for Ada County/Boise Idaho Area which was supported by air quality modeling data. The maintenance plan was approved by EPA as a SIP revision on October 27, 2003 (68 FR 61106). EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA Section 110(a)(2)(K) for the 1997 8-hour ozone NAAQS.

110(a)(2)(L): Permitting Fees

Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of

reviewing, approving, implementing and enforcing a permit, until such time as the SIP fee requirement is superseded by EPA's approval of the state's title V operating permit program.

Idaho's submittal: The Idaho SIP submittal states that CAA section 110(a)(2)(L) requires owners and operators of major stationary sources to pay to the permitting authority fees to cover the costs of review, implementation and enforcement until a fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V. EPA approved Idaho's title V permitting program on October 4, 2001 (66 FR 50574) with an effective date of November 5, 2001. EPA regularly reviews DEQ's title V fee program to determine if the fee structure is adequate to pay for the program and assure the funding is only going toward title V implementation.

EPA analysis: EPA approved Idaho's title V permitting program on October 4, 2001 (66 FR 50574) with an effective date of November 5, 2001. While Idaho's operating permit program is not formally approved into the state's SIP, it is a legal mechanism the state can use to ensure that Idaho DEQ has sufficient resources to support the air program, consistent with the requirements of the SIP. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Idaho's title V permitting program included a demonstration that the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Idaho collects sufficient fees to administer the title V permit program. Therefore, EPA is proposing to conclude that Idaho has satisfied the requirements of CAA Section 110(a)(2)(L) for the 1997 8-hour ozone NAAQS.

110(a)(2)(M): Consultation and Participation by Affected Local Entities

Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

Idaho's submittal: Consultation with a variety of different state and local organizations is a regular part of Idaho DEQ's process of developing SIP revisions. The requirements for plan preparation and public process include 40 CFR part 51, incorporated by reference under IDAPA 58.01.01.107.03.a. Idaho also referenced rules cited under 110(a)(2)(j) above. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: EPA most recently approved IDAPA 58.01.01.107, which incorporates by reference EPA regulations at 40 CFR part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans—on November 26, 2010 (75 FR 72719). As previously discussed above, we are proposing to approve portions of the June 20, 2011, SIP revision which update the incorporation by reference of 40 CFR part 51 as of July 1, 2010, among other federal regulations. EPA most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404 which provide opportunity and procedures for public comment and notice to appropriate federal, state and local agencies on January 16, 2003 (68 FR 2217). EPA is proposing to approve Idaho's SIP as meeting the requirements of CAA Section 110(a)(2)(M) for the 1997 8-hour ozone NAAQS.

VI. Scope of Proposed Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within "Indian Country" as defined in 18 U.S.C. 1151.¹⁹ Therefore, EPA proposes that this SIP approval not extend to "Indian Country" in Idaho. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. See 61 FR 64622 (December 6, 1996) (interim approval does not extend to Indian

Country); 66 FR 50574 (October 4, 2001) (full approval does not extend to Indian Country).

VII. Proposed Action

EPA is proposing to approve the SIP submittal from the State of Idaho demonstrating that the Idaho SIP meets the requirements of section 110(a)(1) and (2) of the CAA for the NAAQS promulgated for ozone on July 18, 1997. EPA is proposing to approve in full the following section 110(a)(2) infrastructure elements for Idaho for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), (M). EPA is taking no action on CAA section 110(A)(2)(E)(ii) at this time. EPA will address the requirements of this sub-element in a separate action. EPA is also proposing to approve a portion of Idaho's June 20, 2011, SIP submittal that applies Idaho's PSD Program to GHG-emitting sources at the emissions thresholds and in the same time frames as those specified in the Tailoring Rule. In conjunction with this proposed approval of Idaho's PSD program for GHG-emitting sources, EPA is proposing to rescind the FIP at 40 CFR 52.37 which provides for EPA to be the PSD permitting authority for GHG-emitting sources in Idaho.

EPA is also proposing to approve portions of Idaho's June 20, 2011, annual IBR SIP update to revise the incorporation by reference of federal regulations revised as of July 1, 2010, in order to ensure Idaho's SIP is up to date with changes to federal regulations. EPA is not acting on the portions of the SIP revision that are not related to the criteria pollutants regulated under title I of the Act or the requirements for SIPs under section 110 of the Act. Finally, EPA is proposing to approve the removal of language from the Idaho SIP that has become unnecessary due to Idaho's incorporation by reference of the federal NAAQS and the federal PSD regulations. Specifically, EPA is proposing to approve the removal of the subsections of IDAPA 58.01.01.577 "Ambient Air Quality Standards for Specific Pollutants" that relate to pollutants for which EPA has promulgated a NAAQS, and which are now unnecessary because Idaho has incorporated the federal NAAQS by reference into the state SIP. EPA is also proposing to approve the changes to Idaho's PSD regulations at IDAPA 58.01.01.581.01 to remove the increments table in its entirety, and to instead reference the federal PSD increment requirements contained in 40 CFR 52.21(c), which are incorporated by reference in the Idaho SIP. This action

is being taken under section 110 and part C of the CAA.

VIII. Statutory and Executive Order Reviews

Under the CAA, 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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's 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 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 (Pub. L. 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 those requirements would be inconsistent with the CAA; and
- Does not provide 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 Idaho, and EPA notes that it

¹⁹ "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 27, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2012–8706 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, and 175

[Docket No. PHMSA–2009–0095 (HM–224F)]

RIN 2137–AE44

Hazardous Materials: Transportation of Lithium Batteries

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking; request for additional comment.

SUMMARY: In this document, PHMSA is seeking comment on the impact of changes to the requirements for the air transport of lithium cells and batteries that have been adopted into the 2013–2014 International Civil Aviation Organization Technical Instructions on the Transport of Dangerous Goods by Air (ICAO Technical Instructions). PHMSA is considering whether to harmonize with these requirements and is publishing this notice to allow interested persons an opportunity to supplement comments to our January 11, 2010, Notice of Proposed Rulemaking (NPRM).

DATES: *Comments Due Date:* May 11, 2012.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA–2009–0095) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Asking for Confidential Treatment: If you want PHMSA to give your comment confidential treatment, you must file it in paper form and take the following steps in accordance with 49 CFR 105.30:

- (1) Mark “confidential” on each page of the original document you would like to keep confidential.

- (2) Send us, along with the original document, a second copy of the original document with the confidential information deleted.

- (3) Explain why the information you are submitting is confidential (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552 or it is information referred to in 18 U.S.C. 1905).

PHMSA will decide whether or not to treat your information as confidential. We will notify you, in writing, of a decision to grant or deny confidentiality at least five days before the information is publicly disclosed, and give you an opportunity to respond.

FOR FURTHER INFORMATION CONTACT:

Kevin A. Leary, Standards and Rulemaking Division, Pipeline and

Hazardous Materials Safety Administration, telephone (202) 366–8553, or Michael Locke, Program Development Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–1074.

Background

On January 11, 2010 (75 FR 1302), PHMSA, in coordination with the Federal Aviation Administration (FAA), published a Notice of Proposed Rulemaking (NPRM) to address the air transportation risks posed by lithium cells and batteries. Some of the proposals in the NPRM were intended to harmonize provisions in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) with provisions in the ICAO Technical Instructions; other proposals in the NPRM were intended to address safety concerns arising from research findings from the FAA Technical Center suggesting that current aircraft systems and procedures may not be sufficient to combat a fire involving lithium batteries (from either an external cargo fire or internal source from manufacturing defects).¹ The FAA Technical Center issued an additional report in 2010 that supplements the previous studies. All of these reports are available in the public docket of this rulemaking. Many of the commenters to the NPRM urged PHMSA to adopt lithium battery transport safety standards identical to those in the 2011–2012 edition of the ICAO Technical Instructions.

Since PHMSA published the NPRM, the ICAO Dangerous Goods Panel has met several times and devoted considerable discussion to the provisions applicable to the air transport of lithium cells and batteries. As a result, there have been many changes in the ICAO standards applicable to the air transport of lithium cells and batteries. Given the increased efficiency and clarity in having a uniform global standard, PHMSA considers harmonization with international standards when there is no adverse impact to safety. Therefore, consistent with 49 U.S.C. 5120, PHMSA is now considering harmonizing the HMR with lithium battery provisions recently adopted by ICAO and which will become effective on January 1, 2013.

¹ Flammability Assessment of Bulk-Packed, Non rechargeable Lithium Primary Batteries in Transport Category Aircraft; June 2004 (DOT/FAA/AR–04/26); and Flammability Assessment of Bulk-Packed, Rechargeable Lithium-Ion Cells in Transport Category Aircraft; April 2006 (DOT/FAA/AR–06/38).