

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2007-0406; FRL-9247-9]

### Approval and Promulgation of Implementation Plans; Idaho

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Idaho State Implementation Plan (SIP) that were submitted to EPA by the State of Idaho on April 16, 2007. This SIP submittal includes new and revised rules which provide the Idaho Department of Environmental Quality (IDEQ) the regulatory authority to address regional haze and to implement Best Available Retrofit Technology (BART) requirements. The rule revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act or CAA). EPA is also taking action on several other visibility-related rule revisions included in the submittal which are not specifically related to regional haze or BART requirements. One revision related to open burning is not being addressed in this action because it was superseded by a subsequent SIP revision on May 28, 2008, which was approved in a separate rulemaking on August 1, 2008. Other revisions related to permitting are not being addressed in this action because they were superseded by subsequent SIP revisions on May 12, 2008, and June 8, 2009, which were approved in a separate rulemaking on November 26, 2010.

**DATES:** Comments must be received on or before February 4, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2007-0406, by any of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* R10-Public\_Comments@epa.gov.

- *Mail:* Steve Body, 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: Steve Body, 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-2007-0406. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://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 e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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 <http://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 <http://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:** Steve Body at telephone number: (206) 553-0782, e-mail address: [body.steve@epa.gov](mailto:body.steve@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we", "us" or "our" are used, we mean

EPA. Information is organized as follows:

### Table of Contents

- I. Purpose of Proposed Action
- II. Background for Proposed Action
- III. Idaho SIP Revisions and EPA's Proposed Action
  - A. New and Revised Definitions
  - B. Regional Haze (including BART) Provisions
  - C. Other Visibility-Related Provisions
- IV. Scope of Proposed Action
- V. Statutory and Executive Order Reviews

### I. Purpose of Proposed Action

The purpose of this action is to propose approval of revisions to Idaho's SIP that were submitted to EPA by the State of Idaho IDEQ on April 16, 2007. The SIP submittals revise and amend IDEQ's Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) currently in the Federally approved Idaho SIP (Code of Federal Regulations part 52, subpart N). This action will update the Federally approved SIP to reflect changes to IDAPA 58.01.01 that were made by IDEQ and reviewed and deemed approvable into the SIP. The proposed SIP revisions are explained in more detail below along with our evaluation of how these rules comply with the requirements for SIPs and the basis for our action.

### II. Background for Proposed Action

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to meet requirements of the Act and EPA's actions regarding approval of those SIPs. With this action we propose to approve the SIP submittal related to regional haze, and specifically, BART. We are taking no action on some of the provisions of the April 16, 2007, submittal because they were superseded in a May 28, 2008, submittal which was subsequently approved in a separate rulemaking on August 1, 2008. 73 FR 44915. We are also proposing to take no action in this rulemaking on other SIP revisions related to permitting because they were superseded by a May 12, 2008, submittal which was subsequently approved in a separate rulemaking on November 26, 2010. 75 FR 72719.

### III. Idaho SIP Revisions and EPA's Proposed Action

#### A. New and Revised Definitions

Idaho has made numerous revisions to its definition sections (Section 006 General Definitions and Section 007 Definitions for the Purposes of Sections 200 through 228 and 400 through 461). New definitions have been added for the new regional haze provisions, some

existing definitions related to visibility permitting have been revised for use in the regional haze provisions and relocated from Section 007 to Section 006, and numerous editorial changes have been made to conform to renumbered definitions and correct internal cross-references. Specifically:

#### New Definitions

Idaho has added several new definitions for the purposes of the new regional haze rules, specifically: Section 006.14 Bart-Eligible Source; Section 006.16 Best Available Retrofit Technology (BART); Section 006.28 Deciview; Section 006.43 Federally Enforceable; Section 006.59 Least Impaired Days; Section 006.65 Most Impaired Days; Section 006.67 Natural Conditions; Section 006.91 Regional Haze; and Section 006.125 Visibility in Any Mandatory Class I Area. These new definitions are consistent with the EPA definitions in 40 CFR 51.301. EPA proposes to approve these new definitions.

#### Existing Definitions With Revisions

The following currently-approved definitions have been revised, renumbered, and/or relocated to make them consistent with the new regional haze provisions: Section 006.04 Adverse Impact on Visibility (moved from 007.01 to 006.04 and clarified how it relates to integral vistas under 40 CFR 51.307); Section 006.41 Federal Class I Area (removed cross reference to Section 580); Section 006.42 Federal Land Manager (revised to make applicable only to Class I areas); Section 006.57 Integral Vista (moved from 007.07 to 006.57 and removed reference to 40 CFR 51.304(a)); Section 006.61 Mandatory Class I Federal Area (moved from 007.08 to 006.61 and replaced reference to 42 U.S.C. 7472(a) with a reference to 40 CFR 81.400 to 437); Section 006.81 Potential to Emit/Potential Emissions (removed language regarding capacity factor); and Section 006.124 Visibility Impairment (moved from 007.17 to 006.124 and added light extinction to the parenthetical list of examples of impairment).

Since Idaho has now adopted EPA's Prevention of Significant Deterioration (PSD) rules by reference in Section 205, including the definitions at 40 CFR 52.21(b), these definitions are no longer needed for the purposes of Sections 200 through 228. The revised definitions are consistent with the EPA definitions in 40 CFR 51.301. EPA proposes to approve these revised definitions.

#### Renumbered Definitions and Definitions With Cross-Reference Changes Only

The following currently-approved definitions have been renumbered and/or relocated without change or with changes only to internal cross-references: Section 006.62 Member of the Public (cross-reference correction); Section 006.63 Modification (cross-reference correction); Section 006.92 Regulated Air Pollutant (cross-reference correction); Section 006.99 Secondary Emissions (moved from 007.13 to 006.99 unchanged); Section 006.101 Significant (cross-reference correction); and Section 007.02 Baseline Actual Emissions (renumbered from 007.03 to 007.02 and cross-references in paragraphs a.iv and d corrected).

EPA proposes to approve the editorial changes to these existing approved definitions.

#### B. Regional Haze (including BART) Provisions

Idaho has adopted new sections 665 through 668 which provide the State with the authority to address regional haze in accordance with the requirements of the Act and EPA's regulations at 40 CFR 51.300 through 308. These include: Section 666 Reasonable Progress Goals, which is consistent with 40 CFR 51.308(d)(1); Section 667 Long-Term Strategy for Regional Haze, which is consistent with 40 CFR 51.308(d)(3); and Section 668 BART Requirement for Regional Haze, which is consistent with 40 CFR 51.308(e). EPA proposes to approve these new rules as providing authority for Idaho to adopt a regional haze plan. EPA is proposing action on the Idaho regional haze plan in a separate rulemaking.

In addition, Idaho has incorporated several Federal rules addressing visibility and Regional Haze at 58.01.01.107.03(a)(ii), and (c) Incorporation by Reference, specifically: 40 CFR part 51, subpart P, 40 CFR part 51, Appendix Y, and 40 CFR 51.301, 51.304(a), 51.307, and 51.308. This provision has been superseded by a more recent submittal (June 8, 2009) which was approved by EPA in a separate rulemaking on November 26, 2010. 75 FR 72719.

#### C. Other Visibility-Related Provisions

Section 204 Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas: Idaho has revised subsection 02, Additional Requirements, paragraph d. Effect on Visibility which is a requirement of a permit applicant for a permit to satisfactorily demonstrate to

the IDEQ the effect on visibility of any Federal Class I area or integral vista is consistent with making reasonable progress toward the national visibility goal in 40 CFR 51.300(a). This provision has been superseded by a more recent submittal (May 12, 2008) which was approved by EPA in a separate rulemaking on November 26, 2010. 75 FR 72719.

Section 205 Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas: Idaho has revised subsection 02, Effects on Visibility. Effect on Visibility which is a requirement of a permit applicant for a permit to satisfactorily demonstrate to the IDEQ the effect on visibility of any Federal Class I area or integral vista is consistent with making reasonable progress toward the national visibility goal in 40 CFR 51.300(a). This provision has been superseded by a more recent submittal (May 12, 2008) which was approved by EPA in a separate rulemaking on November 26, 2010. 75 FR 72719.

58.01.01.600 Rules for Control of Open Burning: This revision adds language to indicate that the purpose of the open burning rules includes reducing the visibility impairment in mandatory Class I Federal Areas in accordance with the regional haze long-term strategy. This provision has been superseded by a subsequent revision and was addressed in a separate action. See 73 FR 44915 (August 1, 2008).

58.01.01.651 General Rules [for Control of Fugitive Dust]: This revision adds language requiring that proximity to a Class I area be considered when determining when reasonable precautions must be taken to prevent particulate matter from becoming airborne. We propose to approve this requirement as a SIP-strengthening rule change. This revision will allow Idaho to further control sources of fugitive dust when those sources impact air quality, including visibility, in Class I areas.

#### IV. 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.<sup>1</sup> Therefore,

<sup>1</sup> "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

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 SIP revisions, 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, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 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

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.

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 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, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 22, 2010.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2010-33281 Filed 1-4-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1994-0001; FRL-9246-9]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the AT&SF Albuquerque Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) proposes to delete, from the National Priority List (NPL), 40 CFR part 300, appendix B, 62 acres of the AT&SF Albuquerque

Superfund Site (Site). The Site is located in Albuquerque, Bernalillo County, New Mexico. After this deletion, this 62 acres will no longer be part of the Site and only the 27 acres making up the southern half of the Site will remain a listed Superfund Site (see the Environmental Protection Easement and Declaration of Restrictive Covenants in the docket). The only contaminated medium that was identified on the northern 62 acres of the Site was soil. This soil was remediated so that the concentration levels of hazardous substances that remain are consistent with future industrial or commercial use. This notice of intent for partial deletion is being published by EPA with the concurrence of the State of New Mexico, through the New Mexico Environment Department (NMED), because EPA has determined that all appropriate response actions for this parcel under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

**DATES:** Comments must be received by February 4, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1994-0001, by one of the following methods:

- <http://www.regulations.gov>: Follow on-line instructions for submitting comments.

- *E-mail:* [coltrain.katrina@epa.gov](mailto:coltrain.katrina@epa.gov).

- *Fax:* 214-665-6660, Attention:

Katrina Higgins-Coltrain.

- *Mail:* Katrina Higgins-Coltrain, Remedial Project Manager, U.S. EPA Region 6 (6SF-RL), 1445 Ross Avenue, Dallas, TX 75202-2733.

- *Hand delivery:* U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID no. EPA-HQ-SFUND-1994-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 [http://](http://www.regulations.gov)