

regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source-specific RACT determinations under the 2008 8-hour ozone NAAQS for certain major sources of NO<sub>x</sub> and VOC emissions. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 proposed rule, Delaware's 2008 8-hour ozone RACT SIP revision 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 30, 2017.

**John Armstead,**

*Acting Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2015-0856, FRL-9967-54-Region 10]

### Air Plan Approval; ID; 2012 PM<sub>2.5</sub> Standard Infrastructure Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to find that the Idaho State Implementation Plan (SIP) meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for the annual particulate matter (PM<sub>2.5</sub>) standard on December 14, 2012. Whenever a new or revised NAAQS is promulgated, the CAA requires states to submit a plan for the implementation, maintenance and enforcement of such NAAQS. The plan is required to address basic program elements, including but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure

requirements. On December 23, 2015, the State of Idaho submitted a certification to the EPA that the Idaho SIP meets the infrastructure requirements for the 2012 PM<sub>2.5</sub> NAAQS.

**DATES:** Comments must be received on or before October 12, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2015-0856, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Matthew Jentgen, Air Planning Unit, Office of Air and Waste (OAW-150), Environmental Protection Agency, Region 10, 1200 Sixth Ave., Suite 900, Seattle, WA 98101; telephone number: 206-553-0340, email address: [jentgen.matthew@epa.gov](mailto:jentgen.matthew@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" is used, it is intended to refer to the EPA. Information is organized as follows:

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### I. Background

On July 18, 1997, the EPA promulgated a new 24-hour and a new annual NAAQS for PM<sub>2.5</sub> (62 FR 38652). On October 17, 2006, the EPA revised the NAAQS for PM<sub>2.5</sub>, tightening the 24-

hour PM<sub>2.5</sub> standard from 65 micrograms per cubic meter (µg/m<sup>3</sup>) to 35 µg/m<sup>3</sup>, and retaining the annual PM<sub>2.5</sub> NAAQS at 15 µg/m<sup>3</sup> (71 FR 61144). Subsequently, on December 14, 2012, the EPA revised the level of the health based (primary) annual PM<sub>2.5</sub> NAAQS to 12 µg/m<sup>3</sup>. See 78 FR 3086 (January 15, 2013).<sup>1</sup>

The CAA requires that states submit SIPs meeting the requirements of CAA sections 110(a)(1) and (2) within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and (2) require states to address basic SIP elements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, the so-called “infrastructure” requirements. To help states, the EPA issued guidance on September 13, 2013, addressing infrastructure SIP elements for certain NAAQS.<sup>2</sup> As noted in the guidance, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, states may certify that fact via a letter to the EPA.

On December 23, 2015, the State of Idaho submitted certifications to the EPA that the Idaho SIP meets the infrastructure requirements for the 2012 PM<sub>2.5</sub> NAAQS.

## II. CAA Sections 110(a)(1) and (2) Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. CAA 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.

<sup>1</sup> In EPA’s 2012 PM<sub>2.5</sub> NAAQS revision, EPA left unchanged the existing welfare (secondary) standards for PM<sub>2.5</sub> to address particulate matter (PM) related effects such as visibility impairment, ecological effects, damage to materials and climate impacts. This includes a secondary annual standard of 15 µg/m<sup>3</sup> and a 24-hour standard of 35 µg/m<sup>3</sup>.

<sup>2</sup> Stephen D. Page, Director, Office of Air Quality Planning and Standards. “Guidance on Infrastructure Clean Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).” Memorandum to EPA Air Division Directors, Regions 1–10, September 13, 2013.

- 110(a)(2)(D): Interstate transport.<sup>3</sup>
- 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.

The EPA’s guidance clarified that two elements identified in CAA section 110(a)(2) are not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to CAA section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) Submissions required by CAA 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 CAA 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 CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or CAA section 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

## III. EPA Approach to Review of Infrastructure SIP Submittals

The EPA is taking action on the December 23, 2015 infrastructure submission from Idaho for purposes of the 2012 PM<sub>2.5</sub> NAAQS. We previously approved a similar submission as meeting infrastructure requirements for nitrogen dioxide and sulfur dioxide standards (August 11, 2014, 79 FR 46707). In the preamble of our action,

<sup>3</sup> In this notice, we are proposing to act on Idaho’s submission relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii). We will address Idaho’s submission relating to 110(a)(2)(D)(i)(I) in a separate action.

we published a discussion of the EPA’s approach to review of these submissions. Please see our April 17, 2014 proposed rule for the detailed discussion (79 FR 21669, at page 21670).

## IV. Analysis of the Idaho Submittal

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

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

*State submittal:* The Idaho 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 for the Control of Air Pollution located at IDAPA 58.01.01. Relevant laws cited include Idaho Code Section 39–105(3)(d) which provides Idaho DEQ authority to supervise and administer a system to safeguard air quality, Idaho Code Section 39–115 which provides Idaho DEQ with specific authority for the issuance of air quality permits, and Idaho Code Section 39–116 which provides Idaho DEQ authority to establish compliance schedules for air quality regulatory standards. Relevant regulations include IDAPA 58.01.01.107.03 (incorporation by reference of federal regulations), IDAPA 58.01.01.200–228 (permit to construct rules), IDAPA 58.01.01.400–410 (operating permit rules), IDAPA 58.01.01.600–624 (control of open burning), IDAPA 58.01.01.625 (visible emissions requirements and testing), IDAPA 58.01.01.725 (rules for sulfur content of fuels), and IDAPA 58.01.01.460–461 (banking of emissions).

*EPA analysis:* Idaho’s SIP meets the requirements of section 110(a)(2)(A) for the 2012 PM<sub>2.5</sub> NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining this particulate matter NAAQS. The State has one area designated nonattainment for the 2012 PM<sub>2.5</sub> NAAQS (West Silver Valley); however, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D, title I of the CAA to be governed by the submission deadline of section 110(a)(1). Regulations and other control measures for purposes of attainment

planning under part D, title I of the CAA are due on a different schedule than infrastructure SIPs.

The Idaho SIP incorporates by reference a number of federal regulations, including the federal NAAQS at 40 CFR part 50, revised as of July 1, 2015. The EPA most recently approved the incorporation by reference of these regulations at IDAPA 58.01.01.107 “Incorporations by Reference” on May 12, 2017 (82 FR 22083). Idaho has incorporated by reference the 2012 PM<sub>2.5</sub> NAAQS into Idaho regulations.

Idaho generally regulates emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors through its SIP-approved NSR permitting programs, in addition to operating permit regulations, sulfur content of fuels regulations, and rules for the control of open burning, fugitive dust, activities that generate visible emissions, and emissions banking. The EPA most recently approved revisions to Idaho’s major and minor NSR permitting programs on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho’s NSR rules incorporate by reference the federal nonattainment NSR regulations and federal PSD regulations at IDAPA 58.01.204 and IDAPA 58.01.01.205 respectively. In addition to NSR permitting regulations, Idaho’s Tier II operating permit regulations at IDAPA 58.01.01.400–410 require that to obtain an operating permit, the applicant must demonstrate the source will not cause or significantly contribute to a violation of any ambient air quality standard. IDAPA 58.01.01.401.03 provides that Idaho DEQ will require a Tier II source operating permit if Idaho DEQ determines emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable PSD increment.

In addition to the permitting rules described above, Idaho has adopted rules to limit and control emissions resulting from open burning (IDAPA 58.01.01.600–624) and activities that generate visible emissions (IDAPA 58.01.01.625). Idaho has also promulgated rules addressing the sulfur content of fuels (IDAPA 58.01.01.725) and banking of emissions (IDAPA 58.01.01.460–461). Based on the above analysis, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2012 PM<sub>2.5</sub> NAAQS.

In this action, we are not proposing to approve or disapprove any existing Idaho provisions with respect to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. The EPA believes that a number

of states may have SSM provisions that are contrary to the CAA and existing EPA guidance and the EPA is addressing such state regulations in a separate action. See “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction: Final Rule.” (June 12, 2015, 80 FR 33840) (SSM SIP Call). The EPA determined that certain SIP provisions in 36 states (applicable in 45 statewide and local jurisdictions) were substantially inadequate to meet CAA requirements, and thus issued a SIP call for each of those 36 states. Idaho’s SIP was *not* named in the SSM SIP call.

In addition, we are not proposing to approve or disapprove any existing Idaho rules with respect to director’s discretion or variance provisions. Some states may have such provisions that are contrary to the CAA and existing EPA guidance and the EPA is addressing such regulations in a separate action via the SSM SIP Call (June 12, 2015, 80 FR 33840). We encourage 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*

CAA 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 the EPA upon request.

*State submittal:* The Idaho 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. The Idaho submittal certifies that under these rules Idaho meets the infrastructure requirement to implement ambient air monitoring surveillance systems in accordance with the requirements of the CAA.

The Idaho submittal references the 2015 Idaho Annual Ambient Air Monitoring Network Plan, approved by the EPA on October 28, 2015. The Idaho submittal also references the Web site where the Idaho DEQ provides the network plan, air quality monitoring summaries, a map of the monitoring network and real-time air monitoring data.

*EPA analysis:* A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by Idaho on January 15, 1980 (40 CFR 52.670) and approved by the EPA on July 28, 1982. This air quality monitoring plan has been subsequently updated and most recently approved by the EPA on December 13, 2016.<sup>4</sup> The plan includes, among other things, the locations for the particulate matter monitoring network. Idaho makes the plan available for public review on the Idaho DEQ 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. Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2012 PM<sub>2.5</sub> NAAQS.

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

CAA section 110(a)(2)(C) requires states have 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.

*State submittal:* The Idaho submittal refers to Idaho Code Section 39–108 which provides Idaho DEQ with both administrative and civil enforcement authority with respect to the Idaho 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 submittal also refers to laws and regulations related to air quality permits at IDAPA 58.01.01.200–228 (permit to construct rules).

The Idaho submittal also cites the annual incorporation by reference (IBR) rulemaking which updates Idaho’s SIP to include federal changes to the NAAQS and PSD program. Idaho’s submittal certifies that the annual IBR updates along with IDAPA sections

<sup>4</sup> Idaho Air Quality Monitoring Network Plan Approval Letter, dated December 13, 2016.

200–288 (permitting requirements for new and modified sources) and 575–587 (air quality standards and area classification) meets the CAA infrastructure requirement to implement the PSD program.

*EPA analysis:* With regard to the requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that the Idaho provisions described above provide Idaho DEQ with authority to enforce the Idaho EPHA, air quality regulations, permits, and orders promulgated pursuant to the EPHA. Idaho DEQ staffs and maintains an administrative 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. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the 2012 PM<sub>2.5</sub> NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) with regard to the regulation of construction of new or modified stationary sources, a state is required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2012 PM<sub>2.5</sub> NAAQS. Idaho has one designated nonattainment area for the 2012 PM<sub>2.5</sub> NAAQS (West Silver Valley). However, as noted above, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR).

We most recently approved revisions to Idaho's PSD program on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho's SIP-approved PSD program implements the 2012 PM<sub>2.5</sub> NAAQS and incorporates by reference the federal PSD program requirements at 40 CFR 52.21 as of July 1, 2015. As a result, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) with regard to PSD for the 2012 PM<sub>2.5</sub> NAAQS.

We note that on January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded two of the EPA's rules implementing the 1997 PM<sub>2.5</sub> NAAQS, including the "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>),"

(May 16, 2008, 73 FR 28321) (2008 PM<sub>2.5</sub> NSR Implementation Rule). The court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at 437. Subpart 4 of part D, title I of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 PM<sub>2.5</sub> NSR Implementation Rule addressed by the court's decision promulgated NSR requirements for implementation of PM<sub>2.5</sub> in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 PM<sub>2.5</sub> NSR Implementation Rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 PM<sub>2.5</sub> NSR Implementation Rule in order to comply with the court's decision.

To address the court's remand, the EPA promulgated a final rule for the "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements" on August 24, 2016 (81 FR 58011). This rule sets requirements for major stationary sources in PM<sub>2.5</sub> nonattainment areas. The EPA interprets the CAA section 110(a)(1) and (2) infrastructure submissions due three years after adoption or revision of a NAAQS to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which are due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as ten years following designations for some elements. Accordingly, our proposed approval of elements 110(a)(2)(C), (D)(i)(II), and (J), with respect to the PSD requirements, does not conflict with the court's opinion.

In addition, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, 703 F.3d 458 (D.C. Cir. 2013), issued a judgment that, among other things, vacated the provisions adding the PM<sub>2.5</sub> Significant Monitoring Concentration (SMC) to the federal regulations, at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), that were promulgated as part of the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring

Concentration (SMC); Final Rule," (October 10, 2010, 75 FR 64864) (2010 PSD PM<sub>2.5</sub> Implementation Rule). In its decision, the court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for PM<sub>2.5</sub> be included in all PSD permit applications. Thus, although the PM<sub>2.5</sub> SMC was not a required element of a state's PSD program, were a state PSD program that contains such a provision to use that provision to issue new permits without requiring ambient PM<sub>2.5</sub> monitoring data, such application of the vacated SMC would be inconsistent with the court's opinion and the requirements of section 165(e)(2) of the CAA.

This decision also, at the EPA's request, vacated and remanded to the EPA for further consideration the portions of the 2010 PSD PM<sub>2.5</sub> Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to Significant Impact Levels (SILs) for PM<sub>2.5</sub>. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for PM<sub>2.5</sub>, because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. The court's decision does not affect the PSD increments for PM<sub>2.5</sub> promulgated as part of the 2010 PSD PM<sub>2.5</sub> Implementation Rule.

The EPA amended its regulations to remove the vacated PM<sub>2.5</sub> SILs and SMC provisions from PSD regulations on December 9, 2013 (78 FR 73698). On August 12, 2016, we approved revisions to the Idaho SIP as being consistent with the court decision and revised EPA regulations (81 FR 53290).

The EPA has also promulgated revisions to federal PSD requirements for greenhouse gas (GHG) emissions, in response to a court remand and vacatur. Specifically, on June 23, 2014, the United States Supreme Court, in *Utility Air Regulatory Group (UARG) v. EPA*,<sup>5</sup> issued a decision that said the EPA may not treat GHGs as air pollutants for purposes of determining whether a source is a major source (or modification thereof) required to obtain a PSD permit. The Court also said the EPA could continue to require that PSD

<sup>5</sup> 134 S.Ct. 2427 (2014).

permits otherwise required based on emissions of pollutants other than GHGs contain limits on GHG emissions based on the application of Best Available Control Technology (BACT).

In response to the *UARG* decision, and the subsequent Amended Judgment issued by the D.C. Circuit (Amended Judgment),<sup>6</sup> the EPA revised the federal PSD rules to allow for the rescission of PSD permits that are no longer required under these decisions, (May 7, 2015, 80 FR 26183), and to remove the regulatory provisions that were specifically vacated by the Amended Judgment, (August 19, 2015, 80 FR 50199) (removing 40 CFR 51.166(b)(48)(v), 52.21(b)(49)(v), 52.22, 70.12, and 71.13). In addition, the EPA proposed to revise provisions in the PSD permitting regulations applicable to GHGs to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized (Oct. 3, 2016, 81 FR 68110).

The EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision and the EPA's changes to federal PSD rules in response to the decision. At this juncture, the EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, the EPA has determined the Idaho SIP is sufficient to satisfy CAA section 110(a)(2)(C), (D)(i)(II) and (J) with respect to GHGs because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Idaho PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy CAA section 110(a)(2)(C), (D)(i)(II) and (J) for purposes of the 2012 PM<sub>2.5</sub> NAAQS.

The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that the EPA does not consider necessary at this time in light of the

Supreme Court decision. Accordingly, the Supreme Court decision does not affect our proposed approval of the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) as those elements relate to a comprehensive PSD program. In this action we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) as those elements relate to a comprehensive PSD program.

With regard to the minor NSR requirement of this element, the EPA has determined that Idaho's minor NSR permitting program regulates direct PM<sub>2.5</sub> and NO<sub>x</sub> and SO<sub>2</sub> as precursors. On August 12, 2016, we approved revisions to the Idaho SIP as meeting the federal requirements of minor NSR permitting programs at 40 CFR 51.160 through 164 (81 FR 53290).

Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2012 PM<sub>2.5</sub> NAAQS.

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

CAA section 110(a)(2)(D)(i) requires state 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 (CAA section 110(a)(2)(D)(i)(I)). Further, this section requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality, or from interfering with measures required to protect visibility (i.e. measures to address regional haze) in any state (CAA section 110(a)(2)(D)(i)(II)).

This action also does not address the requirements of CAA section 110(a)(2)(D)(i)(I), which we will address in a future action. In this proposal, we are proposing to act on Idaho's submission relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(i)(I).

*State submittal:* For purposes of CAA 110(a)(2)(D)(i)(II), the submittal referenced Idaho's SIP-approved PSD program and Idaho's Regional Haze SIP submitted to the EPA on October 25, 2010. Idaho also cites IDAPA 58.01.01.209 that provides notice and comment procedures for various permit actions with regard to the public and to appropriate federal, state, international, and local agencies. CAA section 110(a)(2)(D)(i) is discussed below.

*EPA analysis:* The EPA believes that the CAA section 110(a)(2)(D)(i)(II) PSD

sub-element may be met by the State's confirmation in the submittal that new major sources and major modifications in the State are subject to a SIP-approved PSD program. We most recently approved revisions to Idaho's PSD program on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho's SIP-approved PSD program implements the 2012 PM<sub>2.5</sub> NAAQS and incorporates the federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2015. As discussed above in section 110(a)(2)(C), we believe that our proposed approval of element 110(a)(2)(D)(i)(II) is not affected by recent court vacatur of EPA PSD implementing regulations. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with regard to PSD for the 2012 PM<sub>2.5</sub> NAAQS.

The EPA believes that, with regard to the CAA section 110(a)(2)(D)(i)(II) visibility sub-element, the requirement may be satisfied by an approved SIP addressing regional haze. The EPA's reasoning is that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis.

The Idaho submittal references the Idaho Regional Haze SIP, submitted to the EPA on October 25, 2010, which addresses visibility impacts across states within the region. On June 9, 2011, we approved a SIP revision which provides Idaho DEQ authority to address regional haze and to implement best available retrofit technology (BART) requirements (76 FR 33651). Subsequently on June 22, 2011, we approved portions of the Idaho Regional Haze SIP, including the requirements for BART (76 FR 36329). Finally, on November 8, 2012, we approved the remainder of the Idaho Regional Haze SIP, including those portions that address CAA provisions that require states to set Reasonable Progress Goals for their Class I areas, and to develop a Long Term Strategy to achieve these goals (77 FR 66929).

The EPA is proposing to find that as a result of the prior approval of the Idaho Regional Haze SIP, the Idaho SIP contains adequate provisions to address 110(a)(2)(D)(i)(II) visibility requirements with respect to the 2012 PM<sub>2.5</sub> NAAQS. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2012 PM<sub>2.5</sub> NAAQS.

Furthermore, IDAPA 58.01.01.209 provides an opportunity for appropriate

<sup>6</sup> *Coalition for Responsible Regulation v. EPA*, Nos. 09-1322, 10-073, 10-1092, and 10-1167 (April 15, 2015).

federal, state, international, and local agencies to participate and identify any concerns in the permitting process.

*Interstate and international transport provisions:* CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

*EPA analysis:* We most recently approved revisions to Idaho's SIP-approved PSD program on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho's SIP-approved PSD program implements the 2012 PM<sub>2.5</sub> NAAQS and incorporates the federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2015. As noted above, IDAPA 58.01.01.209 (procedures for issuing permits) includes required procedures for issuing permits for new sources, including procedures for public processes, and notice to appropriate federal, state and local agencies, consistent with the requirements of the federal PSD program. Idaho issues notice of its draft permits and neighboring states consistently receive copies of those drafts. Idaho also has no pending obligations under CAA section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2012 PM<sub>2.5</sub> NAAQS.

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

CAA 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) requirements that the state comply with the requirements respecting state boards under 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.

*State submittal:* The Idaho submittal refers to Idaho Code Section 39–106, which gives the Idaho DEQ Director authority to hire personnel to carry out duties of the department. In addition, the submittal references Idaho Code 39–107, which establishes the State's Board of Environmental Quality, Idaho Code

Title 59 Chapter 7 (Ethics in Government Act), and Executive Order 2013–06 which addresses composition requirements of the Idaho Board of Environmental Quality. Finally, the Idaho submittal references Idaho Code Section 39–129, which authorizes Idaho DEQ to enter into binding agreements with local governments that are enforceable as orders.

*EPA analysis:* We are proposing to find that the above-referenced provisions provide Idaho DEQ with adequate authority to carry out SIP obligations with respect to the 2012 PM<sub>2.5</sub> NAAQS as required by CAA section 110(a)(2)(E)(i). With regard to CAA section 110(a)(2)(E)(ii), we previously approved a revision to the Idaho SIP for purposes of meeting CAA section 128 and CAA section 110(a)(2)(E)(ii) on October 24, 2013 (78 FR 63394). We note that Idaho renewed the Executive Order addressing certain board requirements for an additional four years on December 14, 2016 (Executive Order No. 2016–07).<sup>7</sup> Finally, we are proposing to find that Idaho has provided necessary assurances that, where Idaho has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, Idaho has responsibility for ensuring adequate implementation of the SIP with regard to the 2012 PM<sub>2.5</sub> NAAQS as required by CAA section 110(a)(2)(E)(iii). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(E) for the 2012 PM<sub>2.5</sub> NAAQS.

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

CAA 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.

*State submittal:* The Idaho submittal states that the statutes and rules governing air quality permits provide DEQ with the ability to monitor

stationary source emissions for compliance purposes and make data available to the public. The submittal references the following provisions: IDAPA 58.01.01.157, which includes source testing methods and procedures for source testing and reporting to the Idaho DEQ; IDAPA 58.01.01.121, which outlines Idaho DEQ authority to require monitoring, recordkeeping and periodic reporting related to source compliance; IDAPA 58.01.01.122, which provides Idaho DEQ authority to issue information orders and orders to conduct source emissions monitoring, recordkeeping, reporting and other requirements; IDAPA 58.01.01.211, which contains conditions for permits to construct; IDAPA 58.01.01.209, which contains procedures for issuing permits to construct, including public processes; IDAPA 58.01.01.404, which contains procedures for issuing Tier II operating permits, including public processes; IDAPA 58.01.01.405, which contains conditions for Tier II operating permits, including sampling ports, instrumentation to monitor and record, and performance testing; and Idaho Code 9–342A and IDAPA 58.01.21 which address public records. The Idaho submittal also states that Idaho reports emissions data for the six criteria pollutants to the EPA's National Emissions Inventory, which is updated every three years.

*EPA analysis:* The provisions cited in the Idaho submittal establishes compliance requirements for sources subject to major and minor source permitting to monitor emissions, keep and report records, and collect ambient air monitoring data. The provisions cited also provide Idaho DEQ authority to issue orders to collect additional information as needed for Idaho DEQ to ascertain compliance. In addition, IDAPA 58.01.01.211 (conditions for permits to construct) and 58.01.01.405 (conditions for Tier II operating permits) provide Idaho DEQ authority to establish permit conditions requiring instrumentation to monitor and record emissions data, and instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility. This information is made available to the public through public processes outlined at IDAPA 58.01.01.209 (procedures for issuing permits) for permits to construct and 58.01.01.404 (procedures for issuing permits) for Tier II operating permits.

Additionally, the State is required to submit emissions data to the EPA for purposes of the National Emissions

<sup>7</sup> Letter to EPA from John Tippits, Director of Department of Environmental Quality "SIP Elements for State Boards Under Clean Air Act Section 110(a)(1)–(2). January 3, 2017.



Inventory (NEI). The NEI is the EPA's central repository for air emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site <http://www.epa.gov/ttn/chief/eiinformation.html>.

Idaho's SIP and practices are adequate for the stationary source monitoring systems related to the 2012 PM<sub>2.5</sub> NAAQS. The statutes and rules provide Idaho DEQ with the ability to monitor stationary source emissions for compliance purposes and make data publicly available. Based on the analysis above, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2012 PM<sub>2.5</sub> NAAQS.

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

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

*State submittal:* The Idaho submittal cites Idaho Code 39–112 which provides emergency order authority comparable to that in CAA section 303. In addition, the submittal cites the Idaho Air Pollution Emergency Rules (IDAPA 58.01.01.550–562).

*EPA analysis:* CAA section 303 provides authority to the EPA Administrator to restrain any source from causing or contributing to emissions which present an “imminent and substantial endangerment to public health or welfare, or the environment.” We find that Idaho Code Section 112 provides the Idaho DEQ Director with comparable authority.

The Idaho air pollution emergency rules at IDAPA 58.01.01.550–562 were previously approved by the EPA on January 16, 2003 (68 FR 2217). Idaho's air pollution emergency rules include PM<sub>2.5</sub>, establish stages of episode criteria, provide for public announcement whenever any episode stage has been determined to exist, and specify emission control actions to be

taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episodes, sections 51.150 through 51.153) for particulate matter. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2012 PM<sub>2.5</sub> NAAQS.

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

CAA 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.

*State submittal:* The Idaho submittal refers to Idaho Code Sections 39–105(2) and (3)(d) which provide Idaho DEQ with 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. The Idaho submittal also refers to IDAPA 58.01.01.575 through 587 which establish and define acceptable ambient concentrations consistent with established criteria.

*EPA analysis:* We find that Idaho has adequate authority to regularly update the SIP to take into account revisions of the NAAQS and other related regulatory changes. In practice, Idaho regularly updates the SIP for purposes of NAAQS revisions and other related regulatory changes. We most recently approved revisions to the Idaho SIP on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho has incorporated by reference the 2012 PM<sub>2.5</sub> NAAQS into the Idaho SIP. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2012 PM<sub>2.5</sub> NAAQS.

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

There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of

a new or revised NAAQS, but are rather due at the time of the nonattainment area plan requirements pursuant to section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) Submissions required by CAA 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 CAA 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 CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

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

CAA 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. CAA 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, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

*State submittal:* The Idaho submittal refers to laws and regulations relating to public participation processes for SIP revisions and permitting programs. The submittal refers to IDAPA 58.01.01.209, 364, and 404 which provide for public processes related to new source construction permits and operating permits. The submittal also refers to Idaho Code Section 39–105(3)(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, the Idaho submittal references the Idaho transportation conformity rules and regional haze rules which provide for consultation processes. With regard to public notification, the Idaho submittal states that Idaho DEQ submits information to EPA's AIRNOW program and provides daily air quality index scores for many locations throughout Idaho. Finally, with regard to PSD, the submittal references the Idaho rules for major source permitting at IDAPA 58.01.01.200 through 223, including PSD requirements for sources in attainment and unclassifiable areas.

*EPA analysis:* The Idaho 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. The 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 November 26, 2010 (75 FR 47530). We most recently approved Idaho's rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873), and Idaho's regional haze rules on June 9, 2011 (76 FR 33651). In practice, Idaho DEQ routinely coordinates with local governments, states, Federal Land Managers and other stakeholders on air quality issues including permitting action, transportation conformity, and regional haze. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(f) for consultation with government officials for the 2012 PM<sub>2.5</sub> NAAQS.

CAA section 110(a)(2)(f) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. The EPA calculates an air quality index for five major air pollutants regulated by the CAA: Ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. The EPA AIRNOW program provides this air quality index daily to the public, including health effects and actions members of the public can take to reduce air pollution. Idaho actively participates and submits information to the AIRNOW program, in addition to the EPA's Enviroflash Air Quality Alert program. Idaho DEQ also provides the daily air quality index to the public on the DEQ Web site at <http://www.deq.idaho.gov/air/aiqindex.cfm>, as well as measures that can be taken to prevent exceedances. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(f) for public notification for the 2012 PM<sub>2.5</sub> NAAQS.

Turning to the requirement in CAA section 110(a)(2)(f) that the SIP meet the applicable requirements of part C of title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to permitting. The EPA most recently approved revisions to Idaho's PSD program on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho's SIP-approved PSD program implements the 2012 PM<sub>2.5</sub> NAAQS and incorporates by reference the federal PSD program regulations at 40 CFR

52.21 as of July 1, 2015. We believe that our proposed approval of element 110(a)(2)(f) is not affected by recent court vacatur of EPA PSD implementing regulations. Please see our discussion at section 110(a)(2)(C). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(f) with respect to PSD for the 2012 PM<sub>2.5</sub> NAAQS.

With regard to the applicable requirements for visibility protection, the 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 applicable requirement relating to visibility triggered under CAA section 110(a)(2)(f) when a new NAAQS becomes effective. Based on the above analysis, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(f) for the 2012 PM<sub>2.5</sub> NAAQS.

#### *110(a)(2)(k): Air Quality and Modeling/ Data*

CAA 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.

*State submittal:* The Idaho submittal states that air quality modeling is conducted during development of revisions to the SIP, as appropriate for Idaho to demonstrate attainment with required air quality standards. Idaho cites IDAPA 58.01.01.202.02 and IDAPA 58.01.01.402.03 which address permit to construct and Tier II operating permit application procedures and modeling requirements for estimating ambient concentrations, respectively. 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 requirements specified in 40 CFR part 51, Appendix W (Guidelines on Air Quality Models) which is incorporated by reference at IDAPA 58.01.01.107.

*EPA analysis:* We most recently approved IDAPA 58.01.01.107 (incorporations by reference) on May 12, 2017 (82 FR 22083). This rule incorporates by reference the following

EPA regulations: 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 revised as of July 1, 2015. Idaho has incorporated by reference the 2012 PM<sub>2.5</sub> NAAQS into Idaho regulations. Idaho models estimates of ambient concentrations based on 40 CFR part 51 Appendix W (Guidelines on Air Quality Models). To cite an example of a SIP supported by substantial modeling, the EPA approved the PM<sub>10</sub> Second Ten-Year Maintenance Plan for Northern Ada County/Boise Idaho Area on October 2, 2014 (79 FR 59435). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(k) for the 2012 PM<sub>2.5</sub> NAAQS.

#### *110(a)(2)(l): Permitting Fees*

CAA 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 the EPA's approval of the state's title V operating permit program.

*State submittal:* The Idaho submittal refers to IDAPA 58.01.01.387–397, which set the requirements for the annual registration of Tier I (title V) sources and the annual assessment and payment of fees to support the Tier I permitting program. The EPA approved Idaho's title V permitting program on October 4, 2001 (66 FR 50574). The submittal also references IDAPA 58.01.01.407–409 which set the requirements for Tier II operating permit processing fees and usage.

*EPA analysis:* We approved Idaho's title V 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 the EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Idaho's title V program included a demonstration 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 regulations require permitting fees for major sources subject to new source



review, as specified at IDAPA 58.01.01.224–227. Therefore, we are proposing to conclude that Idaho has satisfied the requirements of CAA section 110(a)(2)(L) for the 2012 PM<sub>2.5</sub> NAAQS.

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

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

*State submittal:* The Idaho submittal references IDAPA 58.01.01.209, 364 and 404 which provide for the public processes related to developing and issuing air quality permits. In addition, the submittal references the transportation conformity consultation and public processes at IDAPA 58.01.01.563–574. Finally, the submittal references the consultation and participation process outlined in 40 CFR 51.102, incorporated by reference at IDAPA 58.01.01.107.

*EPA analysis:* The EPA most recently approved IDAPA 58.01.01.107 (incorporations by reference), which incorporates by reference EPA regulations at 40 CFR part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans on May 12, 2017 (82 FR 22083). In addition, we 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 November 26, 2010 (75 FR 47530). Finally, we approved the State rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873). Therefore, we are proposing to approve the Idaho SIP as meeting the

requirements of CAA section 110(a)(2)(M) for the 2012 PM<sub>2.5</sub> NAAQS.

#### V. Proposed Action

The EPA is proposing to find that the Idaho SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2012 PM<sub>2.5</sub> NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action is being taken under section 110 of the CAA.

#### VI. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because the action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in Idaho, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 28, 2017.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 2017–19346 Filed 9–11–17; 8:45 am]

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