

satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, USEPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. USEPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective February 18, 2003.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: December 13, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

#### Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(127) to read as follows:

##### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(127) On July 11, 2002, the Ohio Environmental Protection Agency submitted revisions to Chapter 3745-14-(1 through 11 and Appendices A and B) of the Ohio Administrative Code (OAC), an oxides of nitrogen (NO<sub>x</sub>) budget trading program in Ohio, with a request that the Ohio State Implementation Plan be revised to include these NO<sub>x</sub> rules.

(i) Incorporation by reference.

(A) Ohio NO<sub>x</sub> rules: 3745-14-01, 3745-14-02, 3745-14-03, 3745-14-04, 3745-14-05, 3745-14-06, 3745-14-07, 3745-14-08, 3745-14-09, 3745-14-10, 3745-14-11, Appendix A to Chapter 3745-14 Annual NO<sub>x</sub> allowance allocations to regulated electric generating units for each year from 2004 through 2007, Appendix B to Chapter 3745-14 Annual NO<sub>x</sub> allowance allocation for the control period in years 2004 through 2007 for non-electrical generating units, in the OAC all with an effective date of July 18, 2002.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[ID-02-002; FRL-7422-3]

#### Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve numerous revisions to the State of Idaho Implementation Plan submitted to EPA by the Director of the Idaho Department of Environmental Quality (IDEQ) on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act). EPA is taking no action in this rulemaking on a number of submitted rule provisions which are unrelated to the purposes of the implementation plan, including the Idaho provisions for implementing the title V operating permit program.

EPA is also taking final action to revoke the total suspended particulates (TSP) area designations for Idaho and to adjust the PM-10 area designations to conform to the requirements of EPA's prevention of significant deterioration (PSD) regulations.

**DATES:** Effective February 18, 2003.

**ADDRESSES:** Copies of the State's request and other supporting information used in developing this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho, Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ-107), Seattle, Washington 98101, (206) 553-4253.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 15, 1990, Congress amended the Clean Air Act to require, among other things, revisions to State implementation plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS) in areas which violate those standards (nonattainment areas), including revisions to title I, part D new source review (NSR). IDEQ amended its part D NSR rules on April 8, 1994, and submitted them to EPA on May 17, 1994, as a revision to the Idaho SIP.

Idaho also revised provisions of its SIP to facilitate and improve the relationship between the Idaho SIP and its regulations implementing the

operating permit program under title V of the Act. In addition, since EPA last approved the Idaho SIP in 1993, Idaho has revised nearly every section of its air quality rules to some degree. Many of these amendments have been editorial and are renumberings, changes to citations for cross-referenced rules or statutes, changes in terminology, or grammatical corrections. Finally, during the 2000 legislative session, the Idaho Division of Environmental Quality became a separate department rather than a division of the Idaho Department of Health and Welfare, which remained a separate department. See Idaho Code sections 39–102A and 39–104. At the same time, IDEQ was given the SIP authorities previously held by the Department of Health and Welfare. See Idaho Code sections 39–108 to 39–118D. As a result, Idaho has renumbered and recodified all of its air quality regulations in a new IDAPA Chapter 58. IDEQ submitted these various revisions to its rules for air pollution sources to EPA on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, as revisions to the Idaho SIP.

On August 13, 2002, EPA solicited public comment on a proposal to approve all of the revisions submitted by IDEQ, except identified provisions on which EPA proposed to take no action.<sup>1</sup> EPA also requested public comment on its proposal to delete the TSP area designations for Idaho in 40 CFR 81.313 and to adjust the PM–10 area designations in 40 CFR 81.313. See 67 FR 52666 (August 13, 2002).

## II. Response to Comments

EPA received two comment letters in response to the proposal, one which was submitted by IDEQ. IDEQ expressed support for EPA's proposed action, but did identify some concerns. The other commenter, J.R. Simplot Company (Simplot), raised a concern with the provisions in the Idaho SIP for the control of sulfur oxides in the Eastern Idaho Interstate Air Quality Control Region. The following is a summary of the issues raised by the commenters, along with EPA's response to those issues.

*Comment 1:* IDEQ commented that, in the notice acknowledging consistency

with the Clean Air Act, EPA proposed to conditionally approve IDAPA 58.01.01.213. The proposed condition was that IDEQ submit within 5 days of issuance all written approvals, draft permits, and final permits. IDEQ noted that draft and final permits are at this time submitted by IDEQ to EPA and that IDEQ will submit to EPA on issuance copies of any pre-permit construction approval letters issued under IDAPA 58.01.01.213. IDEQ further asserted that a conditional approval is inappropriate from an administrative and legal standpoint.

*Response 1:* IDEQ is mistaken as to the type of action EPA proposed. EPA did not propose conditional approval under section 110(k)(4) of the Act, which could result in the SIP approval converting to a disapproval if the conditions are not met. Rather, EPA proposed approval of IDAPA 58.01.01.213 under section 110(k)(3) of the Act, based on the understanding that Idaho will provide EPA with copies of approvals issued under that provision, as they do in the case of all new source review permits, so that EPA can carry out its obligations to oversee SIP implementation, provide the public with copies of the SIP requirements for any source when requested, and enforce the SIP requirements if a source begins actual construction without having received the necessary approval from IDEQ.

*Comment 2:* IDEQ commented that IDAPA 58.01.01.220.01.a.iii requires sources that are not specifically listed as categorically exempt under IDAPA 58.01.01.222.02 to demonstrate, with modeling, that the source will not cause or contribute to a violation of an ambient air quality standard. According to IDEQ, the modeling requirement was included in the Idaho rules as a means to ensure that sources that are not specifically identified as categorically exempt but are exempted based on emission levels do not cause or significantly contribute to a violation of an ambient air quality standard. As such, Idaho continued, the requirement is a necessary part of Idaho's program to "assure that national ambient air quality standards are achieved" as required by section 110(a)(2)(C) and (D) of the CAA. Therefore, IDEQ asserted, this provision is appropriately included as part of Idaho's SIP, and EPA should approve the provision into the SIP so that it may be enforced by EPA or by citizens in Federal court.

*Response 2:* EPA's approval of the list of categorically exempt sources and the "below regulatory concern" levels in sections IDAPA 58.01.01.221, –222.01, and –222.02 is based on EPA's

determination that the emission levels and source categories in those sections are appropriately exempted from minor new source review. The requirement in IDAPA 58.01.01.220.01.a.iii that a source conduct modeling to show that its uncontrolled potential to emit will not cause or contribute to a NAAQS violation is a determination that is initially made by the source and is not submitted to IDEQ unless specifically requested. Because this modeling requirement is part of Idaho's requirements for the exemption of certain sources from minor new source review, EPA is approving it as an enforceable requirement of the Idaho SIP, but EPA did not base its approval of the minor new source review exemption provisions on this modeling requirement.

*Comment 3:* IDEQ disagreed with EPA's proposal not to approve IDAPA 58.01.01.222.03 based on EPA's determination that it conflicts with section 110(a)(2)(c) of the CAA and 40 CFR 51.160, which require that the SIP identify types and sizes of sources subject to review and enforcement. IDEQ stated that there are safeguards in the Idaho "director's discretion" exemption, in that the source's potential to emit cannot equal or exceed 100 tons per year of any regulated air pollutant, the emissions increase cannot constitute a major modification, and IDEQ must review and approve the ambient modeling to ensure the source's proposed emissions would not cause or significantly contribute to a violation of any ambient air quality standard. IDEQ pointed out that EPA acknowledges in the proposal that EPA regulations do not require the issuance of a permit for the construction or modification of minor sources, but only that the SIP include a procedure to prevent the construction of a source or modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS. IDEQ concludes that the section 222.03 exemption should be approved because it does not violate any control strategy nor interfere with attainment of the NAAQS.

*Response 3:* As discussed in the proposal, IDAPA 58.01.01.222.03 authorizes IDEQ, without going through rulemaking or a SIP revision, to add individual sources to the list of sources that are exempt from minor NSR as categorically insignificant. See 67 FR at 52670. Although IDEQ states that there are safeguards on this exemption, IDEQ's determination that the source will not cause or contribute to a violation of an ambient air quality standard is at no point in the process

<sup>1</sup> Included in the docket for the proposal and this final action is a table showing all of the provisions of IDAPA chapter 16, now codified at IDAPA chapter 58; the type of change made to the provisions (e.g., new section, amended, editorial change, unchanged, relocated, deleted); the provisions that were not submitted by IDEQ as part of a SIP revision; and those provisions that were submitted as part of a SIP revision but on which EPA is taking no action.

subject to public and EPA review. This is in marked contrast to the other types of sources that are exempt from minor NSR in Idaho, for which the public and EPA have had an opportunity to review and comment on the emission levels and source categories that set the boundaries for the minor NSR exemptions.

It is true that EPA regulations do not require the issuance of a permit for the construction or modification of minor sources provided the SIP includes a procedure to prevent the construction of a source or modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS. EPA statutes and regulations do require, however, that SIP revisions be subject to public comment and EPA approval, CAA 110(l) and 40 CFR 51.104, and also that the public have an opportunity to review and comment on a State's proposed approval of a new source or modification, 40 CFR 51.161(a). At no point in the process is IDEQ's decision that a particular source does not need approval or a permit to construct because it should be exempt under IDAPA 58.01.01.222.03 subject to EPA or public review. Moreover, EPA regulations require that a State's new source review regulations specifically identify the types and sizes of sources subject to review. See 40 CFR 51.160(e). The Idaho rules do not meet this requirement because sources that are initially required by the rules to get a permit can subsequently be exempted from that requirement by the Director of IDEQ without EPA or public notice or approval.

In short, IDAPA 58.01.01.222.03 in effect authorizes IDEQ to revise the SIP without a SIP revision that is subject to public or EPA review. Sections 110(i) and (l) of the CAA specifically preclude States from changing the requirements of the SIP except through SIP revisions adopted by the State after reasonable notice and public hearing and approved by EPA. This "director's discretion" provision of IDAPA 58.01.01.222.03 is inconsistent with those requirements, as well as the requirements of CAA section 110(a)(2)(C), 40 CFR 51.104, 40 CFR 51.160, and 40 CFR 51.161. Therefore, EPA is taking no action on this provision. As noted in the proposal, if IDEQ determines to exempt a source from new source review under the authority of IDAPA 58.01.01.222.03, the source is not exempt from new source review as a matter of Federal law unless and until the exemption has been approved by EPA as a source-specific SIP revision. See 67 FR 52670.

*Comment 4:* IDEQ commented on EPA's proposal not to act on IDAPA 58.01.01.401.04, which authorizes IDEQ to issue a Tier II operating permit with a future compliance date and requires EPA approval prior to issuance of such a permit. Idaho agrees that operating permits sanctioning a requirement that conflicts with the SIP may require a SIP revision. IDEQ asserts, however, that just as IDEQ enters into consent orders and settlement agreements with compliance schedules, IDEQ issues Tier II operating permits containing compliance schedules. IDEQ notes that compliance orders in Tier II permits use language similar to that in Tier II (title V) operating permits, that is, that the terms and conditions of the compliance schedule are supplemental to, and do not sanction noncompliance with, the underlying applicable requirement. For this reason, IDEQ asserts, EPA should approve IDAPA 58.01.01.401.04 as part of the SIP.

*Response 4:* By its terms, a compliance schedule issued under the authority of IDAPA 58.01.01.401.04 allows a source a future compliance date of up to three years beyond the compliance date of any provisions in IDAPA chapter 58. In other words, a compliance schedule issued under the authority of this provision is intended to delay the time for required compliance, in essence, to change the requirement for the source.<sup>2</sup> As such, it is a SIP revision that must be approved by EPA. This is in contrast to the kinds of compliance schedules issued under IDEQ's Tier I (title V) operating permit program or under other authority of State law, under which the compliance schedule sets forth a series of milestones for bringing a source into compliance with an applicable requirement. As noted by IDEQ, a compliance schedule issued in a Tier I (title V) operating permit does not sanction noncompliance with the underlying applicable requirement and does not extend the compliance date for the source. In contrast, a compliance schedule issued under the authority of IDAPA 58.01.01.401.04 by its terms extends the applicable compliance date for the source. In any event, because Idaho regulations provide that compliance schedules issued under the authority of IDAPA 58.01.01.401.04 must be approved by EPA, it is not necessary to include this provision as part of the SIP. Moreover, its inclusion in the SIP could cause confusion.

<sup>2</sup> Such a mechanism would perhaps be better characterized as a compliance extension.

Therefore, EPA is taking no action on this provision.

It may be that IDEQ has authority elsewhere in its Tier II permit program or under other provisions of Idaho law to issue a compliance schedule as part of a Tier II permit that sets forth a series of milestones for bringing a source into compliance with certain requirements, but that does not delay the compliance date, as does a compliance schedule issued under the authority of IDAPA 58.01.01.401.04. EPA's decision to take no action on IDAPA 58.01.01.401.04 has no bearing on IDEQ's authority to issue other types of compliance schedules. EPA recommends, however, that IDEQ carefully identify in any Tier II permit that contains a compliance schedule the regulatory provision under which such a compliance schedule is issued so that the procedure for issuing such a compliance schedule and the legal effect of such a compliance schedule is readily apparent.

*Comment 5:* IDEQ commented that EPA improperly places the burden on Idaho to establish that it has jurisdiction within Indian country with respect to regulation of persons who are not members of the tribe. IDEQ asserts that, under settled Indian law principles, Idaho presumptively has jurisdiction over persons that reside on Indian Reservations in Idaho who are not members of Tribes, citing to *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251, 257–58 (1992). Equally important, according to IDEQ, the CAA itself preserves State law from preemption in section 116 of the CAA, 42 U.S.C. 7416, with respect to air emission standards except in specified situations, and nothing in the statute itself expressly precludes the exercise of such authority in Indian country. IDEQ asserts that EPA therefore should expressly provide in the final rule that nothing in its approval is intended to preclude the exercise of State regulatory authority within Idaho Indian country independent of the CAA to the extent consistent with applicable Indian law principles.

*Response 5:* EPA reads this comment as a request that EPA clarify the status of State law as it applies within Indian reservations or other parts of Indian country.<sup>3</sup> EPA's proposed and final

<sup>3</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

action are under the authority of the Federal Clean Air Act to approve revisions to the SIP so that those SIP provisions will be Federally enforceable under the CAA. Before EPA can approve a SIP or SIP revision as applying to a source, the State must demonstrate that it has adequate legal authority to implement and enforce the SIP under the Clean Air Act. See CAA sections 110(a)(2)(A), 110(a)(2)(E)(i) and 172(c)(6) of the Act. It is EPA's position that unless EPA has explicitly approved a program as applying in Indian country, State or local regulations are not effective within the boundaries of that Indian country land for purposes of complying with the CAA. See Federal Operating Permits Program Final Rule, 64 FR 8247, 8254 (February 19, 1999). EPA does not believe it would be appropriate for EPA to approve State CAA programs as applying in Indian country where there has not been an explicit demonstration of adequate jurisdiction. 64 FR 8253. Moreover, EPA interprets the Clean Air Act as favoring a territorial approach for implementing the CAA throughout Indian reservations either under tribal authority as delegated by Congress or by EPA implementation. 64 FR 8252. EPA believes it has the authority under the CAA to regulate all reservation sources in order to ensure an efficient and effective transition to Tribal administration of CAA programs and to avoid the administratively undesirable checkerboarding of reservations based on land ownership. *Id.* EPA notes that nowhere in the State's SIP submittal did IDEQ attempt to demonstrate that it has the authority to implement and enforce its State laws under the authority of the Clean Air Act in Indian country in Idaho, and EPA has not evaluated these State law authorities outside of the context of the CAA. EPA's proposed approval and this final action do not take a position on whether State laws regulating air resources have effect in Indian country outside of the context of the Clean Air Act.

*Comment 6:* IDEQ commented that disagreement exists over the continued existence of the Nez Perce Reservation as described in Article 2 of the 1863 Treaty with the Nez Percés, 14 Stat. 647 (1863). IDEQ believes that a cession agreement between the United States and the Tribe ratified by Congress in 1894, 28 Stat. 326 (1894), has

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 reservation lands trust lands that have not been formally designated as a reservation.

diminished the Reservation's land base substantially and that the Reservation now encompasses only those lands retained presently in trust pursuant to the terms of the cession agreement, citing to *United States v. Webb*, 219 F.3d 1127 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). IDEQ asserted that EPA and IDEQ acknowledged this controversy in a December 2000 memorandum of understanding (MOU) concerning implementation of title V of the CAA. In view of the decision in *Michigan v. EPA*, 268 F.3d 1075 (D.C. Cir. 2001), IDEQ continued, EPA should make clear its rationale for excluding the entirety of the 1863 Reservation from the scope of the proposed action.

*Response 6:* As discussed above, unless EPA has explicitly approved a program as applying in Indian country, it is EPA's position that State or local regulation is not effective within the boundaries of that Indian country land for purposes of complying with the CAA. EPA is excluding from this SIP approval the Nez Perce Reservation, as described in the 1863 Nez Perce Treaty, because the Federal government has long maintained that the Nez Perce Reservation, as described in that treaty, constitutes Indian country, as defined in 18 U.S.C. 1151.

*Michigan v. EPA*, 268 F.3d 1075 (D.C. Cir. 2001) does not apply to this SIP action. That case dealt with the issue of whether EPA has authority to require a facility to apply to EPA for a Federal operating permit under title V of the Clean Air Act in cases where EPA had not determined whether the facility was in Indian country. This SIP approval is an action under title I of the CAA. Moreover, EPA's position, and that of the United States, is that the exterior boundary of the Nez Perce Reservation that exists today is described in the 1863 Nez Perce Treaty<sup>4</sup> and that the Nez Perce Reservation, as so described, is Indian country. In its comment, the State cites *U.S. v. Webb*, Case No. CR98-80-N-EJL (9th Cir., Jan. 12, 1999), as showing there is a controversy about the Reservation boundaries. However, the United States' position in that case, as well as other cases raising the issue, was that the Nez Perce Reservation is still as described in the 1863 Treaty. *Michigan v. EPA* is therefore not relevant to the issues in this SIP approval.

<sup>4</sup> IDEQ recognized EPA's position in the MOU referenced in IDEQ's comment. The sixth "Whereas" clause of memorandum states: "Whereas, the United States position, both in judicial proceedings and in administrative, civil and criminal contexts is that the present boundaries of the Nez Perce Reservation are as described in the 1863 Nez Perce Treaty."

EPA remains fully committed to the spirit and intent of the December 2000 MOU referenced in the IDEQ comment. The purpose of the MOU, however, was to address the implementation of the operating permits program under title V of the CAA on the Nez Perce Reservation and it does not address the issue of whether IDEQ has established that it has authority under the Clean Air Act to implement and enforce its State regulations approved under title I of the Act against sources located within the boundaries of the Nez Perce Reservation as established by the 1863 Nez Perce Treaty. Moreover, nothing in the MOU constituted an admission by the United States that the Nez Perce Reservation has been diminished or is otherwise in question.

*Comment 7:* Simplot requested reconsideration of EPA's position that EPA approval of Idaho's "Rules for Control of Sulfur Oxide from Sulfuric Acid Plants" does not alter previous EPA disapproval of the Idaho SIP regarding the Eastern Idaho Intrastate Air Quality Control Strategy, nor the source-specific Federal regulations at 40 CFR 52.675. According to Simplot, EPA's position does not recognize relevant and significant history related to the Eastern Idaho Intrastate Air Quality Control Strategy, which has been in attainment for 20 years. Accordingly, Simplot requested that portions of the Federal regulations imposed upon Simplot to adequately prevent violations of the NAAQS for SO<sub>2</sub>, which Simplot contends are obsolete, be revisited and deleted from this portion of the Idaho control strategy.

*Response 7:* This comment does not address aspects of the SIP request submitted by the State of Idaho and on which EPA proposed to take action. Thus, EPA views this comment as a request to conduct rulemaking to revise the existing Federal implementation plan as it pertains to Simplot.

As EPA has previously notified IDEQ and Simplot, EPA does not have the authority to repeal these FIP requirements in the absence of other Federally-enforceable limits on SO<sub>2</sub> emissions from the Simplot sulfuric acid plants approved as part of a SIP or promulgated as part of other Federal requirements and a demonstration that these limits do not interfere with attainment or maintenance of the NAAQS for SO<sub>2</sub>, violate any prevention of significant deterioration (PSD) increment, or result in visibility impairment. To date, EPA has not received from IDEQ or Simplot a demonstration that the Federally-enforceable limits in place at the

Simplot facility are sufficient to protect the SO<sub>2</sub> NAAQS, PSD increments, and visibility in the absence of the requirements Simplot requests be removed. Therefore, as noted in the proposal, EPA's action on this SIP does not modify EPA's previous disapproval of the Idaho SIP with respect to its adequacy to attain and maintain the NAAQS for sulfur dioxide in the Eastern Idaho Intrastate Air Quality Control Region. See 40 CFR 52.675(a)(1) and (2). Thus, the source-specific Federal regulations at 40 CFR 52.675(b) that EPA promulgated in response to that disapproval remain in place. See 67 FR 52672.

### III. Final Action

EPA is taking final action to approve all of the amendments to the Rules for the Control of Air Pollution in Idaho as submitted by the Director of IDEQ on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, except that EPA is taking no action on section 008; subsections 107.03.h. through q<sup>5</sup>; section 222.03; sections 300 through 387; subsection 401.01.a. and section 401.04; sections 440 and 441; sections 525 through 538; section 577.06; section 586; sections 750 and 751; sections 775 and 776; section 818; section 819; section 820; section 824.01; and sections 835 through 839.<sup>6</sup> EPA approved section 204 on April 17, 2001 (66 FR 19722) and sections 563 through 574 and section 582 on April 12, 2001 (66 FR 18873). The entire text of the EPA-approved Idaho rules may be viewed on line at <http://www.epa.gov/r10earth/sips.htm>.

EPA is also deleting the total suspended particulates area designations for Idaho in 40 CFR 81.313 and adjusting the PM-10 area designations in 40 CFR 81.313.

Consistent with EPA's proposal, this SIP approval does not extend to Indian country in Idaho. See 67 FR 52673.

Note that, with respect to Idaho's rules relating to new source review, EPA has determined that Idaho's rules meet the requirements of 40 CFR part 51, subpart I, as currently in effect, and is

taking no position on whether Idaho will need to make changes to its new source review rules to meet requirements that EPA has promulgated, but are not yet effective, as part of new source review reform.

Finally, while EPA is approving the Idaho permit to construct rules, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of the Idaho permit to construct rules does not divest EPA of the duty to continue appropriate oversight to insure that permits issued by Idaho are consistent with the requirements of the Act, EPA regulations, and the SIP. EPA's authority to oversee permit program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of title V of the Act and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by States. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is "not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan."

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the State decision fails to comply with applicable requirements. In determining whether a title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public

review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the title V operating permit.

### IV. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

<sup>5</sup> In the notice of proposed rulemaking, EPA incorrectly cited subsections 107.03.v. through aa.

<sup>6</sup> Sections 009, 010, 140 through 149, 161, 203.03, 210, 585, 587, 590, 591, and 855 through 858 were not submitted for inclusion in the Idaho SIP. In addition, section 710 Particulate Matter—Process Equipment Emission Limitations on or After July 1, 2000, and amendments to section 209 Procedures for Issuing Permits and section 700 Particulate Matter—Process Weight Limitations which were submitted to EPA on March 9, 2001, were returned to the State as incomplete, so they are not before EPA to act on at this time.

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

#### List of Subjects

##### 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.

##### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Particulate matter, Reporting and recordkeeping requirements, Wilderness areas.

Dated: December 4, 2002.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

Part 52, subpart N, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

##### Subpart N—Idaho

2. Section 52.670 is amended by adding paragraph (c)(37) to read as follows:

##### § 52.670 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(37) On May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, the Idaho Department of Environmental Quality submitted amendments to State of Idaho Rules for Control of Air Pollution in Idaho (IDAPA 58.01.01) as revisions to the Idaho State implementation plan.

(i) Incorporation by Reference.

(A) IDAPA 58.01.01 as in effect on March 30, 2001 except for the following provisions: section 000; section 002; section 003; section 008; section 009; section 010; subsections 107.03; section 128; sections 140 through 149; section 161; subsection 203.03; section 209; section 210; section 214; subsection 222.03; section 223; sections 300 through 387; subsection 401.01.a. and 401.04; sections 440 and 441; sections 525 through 538; sections 552, 553, 556,

558, and 561; subsection 577.06; sections 585, 586, 587, 590 and 591; section 700; section 710; sections 750 and 751; sections 775 and 776; section 818; section 819; section 820; subsection 824.01; sections 835 through 839; and sections 855 through 862.

(B) IDAPA 58.01.01 sections 209 and 700 as in effect on April 5, 2000.

(C) IDAPA 58.01.01 sections 552, 553, 556, 558, and 561 as in effect on March 15, 2002.

##### § 52.674 [Removed and Reserved]

3. Section 52.674 Legal Authority is removed and reserved.

4. Section 52.679 is revised to read as follows:

##### § 52.679 Contents of Idaho State Implementation Plan.

##### Implementation Plan for the Control of Air Pollution in the State of Idaho

Chapter I—Introduction (submitted 1–15–80)  
Chapter II—Administration (submitted 1–15–80)

Chapter III—Emission Inventory (submitted 1–15–80)

Chapter IV—Air Quality Monitoring (submitted 1–15–80, and 2–14–80)

Chapter V—Source Surveillance (submitted 1–15–80)

Chapter VI—Emergency Episode Plan (submitted 1–15–80)

Chapter VIII—Nonattainment Area Plans  
VIII-a—Silver Valley TSP Nonattainment Area Plan (submitted 1–15–80); EPA effective 7–28–82.

VIII-b—Lewiston TSP Nonattainment Plan (submitted 1–15–80, 12–4–80, and 2–5–81); EPA effective 7–28–82.

VIII-c—Transportation Control Plan for carbon monoxide, Ada County (submitted 5–24–84, 1–3–85, 3–25–85, and 6–29–94); EPA effective 7–28–82, 8–5–85, and 1–30–95.

VIII-d—Pocatello TSP Nonattainment Plan (submitted 3–7–80, and 2–5–81); EPA effective 7–28–82.

VIII-e—Soda Springs TSP Nonattainment Plan (submitted 1–15–80); EPA effective 7–28–82.

VIII-f—Pinehurst PM-10 Nonattainment Plan (4–14–92); EPA effective 10–24–94.

VIII-g—North Ada County PM10 Nonattainment Area Plan (submitted 11–14–91, 12–30–94, and 7–13–95); EPA effective 7–29–96.

VIII-h—Fort Hall PM-10 Nonattainment Area Plan (FIP); EPA effective 9–22–00.

VIII-i—Sandpoint PM10 Nonattainment Area Plan (submitted 8–16–96); EPA effective 8–26–02.

VIII-j—North Ada County CO Limited Maintenance Plan (submitted 1–17–02); EPA effective 11–27–02.

Chapter IX—Reserved

Chapter X—Plan for Maintenance of National Ambient Air Quality Standards for Lead (submitted 2–3–84); EPA effective 6–4–84.

Small Business Assistance Program (submitted 1–3–94); EPA effective 11–18–94.

Appendix A Legal Authority and other General Administrative Matters (submitted 1-15-80)  
 Appendix A.2 Idaho Environmental Protection and Health Act, Idaho Code Section 39-101 *et seq.* (submitted 3-15-01)

Appendix A.3 Idaho Administrative Procedures Act (IDAPA) Chapter 58, Rules for the Control of Air Pollution in Idaho, previously codified at IDAPA Chapter 39 (submitted 5-17-94, 5-11-95, 11-21-96, 2-28-97, 12-18-97, 4-9-98, 5-5-99, 12-5-00, and 5-30-02)

EPA-approved rules which are incorporated by reference are listed in the table below:

| Citation  | Title   | State effective date |
|---|---|----------------------|
| <b>IDAPA 58—Department of Environmental Quality</b>             |   |                      |
| <b>58.01.01—Rules for the Control of Air Pollution in Idaho</b> |   |                      |
| 001.  | Title and Scope .....   | 5/1/94               |
| 004.  | Catchlines .....  | 5/1/94               |
| 005.  | Definitions .....   | 5/1/94               |
| 006.  | General Definitions .....   | 4/5/00               |
|   |   | 3/20/97              |
|   |   | 5/1/95               |
|   |   | 5/1/94               |
| 007.  | Definitions for the Purposes of Sections 200 Through 225 and 400 Through 461 .....                              | 4/5/00               |
|   |   | 6/30/95              |
|   |   | 5/1/95               |
|   |   | 5/1/94               |
| 106.  | Abbreviations .....   | 5/1/94               |
| 107.  | Incorporations by Reference (Except subsection 03.) .....   | 7/1/97               |
|   |   | 5/1/94               |
| 121.  | Compliance Requirements by Department .....   | 5/1/94               |
| 122.  | Information Orders by the Department .....  | 4/5/00               |
|   |   | 5/1/94               |
| 123.  | Certification of Documents .....  | 5/1/94               |
| 124.  | Truth, Accuracy and Completeness of Documents .....   | 5/1/94               |
| 125.  | False Statements .....  | 3/23/98              |
| 126.  | Tampering .....   | 3/23/98              |
| 127.  | Format of Responses .....   | 5/1/94               |
| 130.  | Startup, Shutdown, Scheduled Maintenance, Safety Measures, Upset and Breakdown .....                            | 4/5/00               |
| 131.  | Excess Emissions .....  | 4/5/00               |
| 132.  | Correction of Condition .....   | 4/5/00               |
| 133.  | Startup, Shutdown and Scheduled Maintenance Requirements .....  | 4/5/00               |
|   |   | 3/20/97              |
| 134.  | Upset, Breakdown, and Safety Requirements .....   | 4/5/00               |
|   |   | 3/20/97              |
| 135.  | Excess Emission Reports .....   | 4/5/00               |
|   |   | 3/20/97              |
| 136.  | Excess Emission Records .....   | 4/5/00               |
|   |   | 3/23/98              |
|   |   | 3/20/97              |
| 155.  | Circumvention .....   | 4/5/00               |
| 156.  | Total Compliance .....  | 5/1/94               |
| 157.  | Test Methods and Procedures .....   | 4/5/00               |
| 160.  | Provisions Governing Specific Activities and Conditions .....   | 4/5/00               |
| 162.  | Modifying Physical Conditions .....   | 5/1/94               |
| 163.  | Source Density .....  | 5/1/94               |
| 164.  | Polychlorinated Biphenyls (PCBs) .....  | 5/1/94               |
| 200.  | Procedures and Requirements for Permits to Construct .....  | 4/5/00               |
| 201.  | Permit to Construct Required .....  | 3/30/01              |
| 202.  | Application Procedures .....  | 4/5/00               |
|   |   | 5/1/94               |
| 203.  | Permit Requirements for New and Modified Stationary Sources (Except subsection 203.03) .....                    | 5/1/94               |
| 204.  | Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas .....                | 3/30/01              |
|   |   | 4/5/00               |
|   |   | 5/1/94               |
| 205.  | Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas ..... | 4/5/00               |
|   |   | 5/1/94               |
| 206.  | Optional Offsets for Permits to Construct .....   | 6/30/95              |
| 207.  | Requirements for Emission Reduction Credit .....  | 5/1/94               |
| 208.  | Demonstration of Net Air Quality Benefit .....  | 4/5/00               |
|   |   | 5/1/94               |
| 209.  | Procedures for Issuing Permits .....  | 4/5/00               |
|   |   | 3/19/99              |
|   |   | 3/23/98              |
|   |   | 5/1/94               |
| 211.  | Conditions for Permits to Construct .....   | 5/1/94               |
| 212.  | Obligation to Comply .....  | 5/1/94               |

| Citation | Title   | State effective date |
|----------|---|----------------------|
| 213.     | Pre-permit Construction .....   | 4/5/00               |
| 220.     | General Exemption Criteria for Permit to Construct Exemptions .....                             | 3/23/98              |
| 221.     | Category I Exemption .....  | 4/5/00               |
| 222.     | Category II Exemption (Except subsection 222.03.) .....   | 4/5/00               |
|          |   | 7/1/97               |
| 400.     | Procedures and Requirements for Tier II Operating Permits .....                                 | 5/1/94               |
| 401.     | Tier II Operating Permit (Except subsections 401.01.a and 401.04) .....                         | 5/1/94               |
|          |   | 4/5/00               |
|          |   | 3/19/99              |
| 402.     | Application Procedures .....  | 5/1/94               |
|          |   | 4/5/00               |
| 403.     | Permit Requirements for Tier II Sources .....   | 5/1/94               |
| 404.     | Procedures for Issuing Permits .....  | 5/1/94               |
|          |   | 4/5/00               |
| 405.     | Conditions for Tier II Operating Permits .....  | 5/1/94               |
| 406.     | Obligation to Comply .....  | 5/1/94               |
| 460.     | Requirements for Emission Reduction Credit .....  | 4/5/00               |
|          |   | 5/1/94               |
| 461.     | Requirements for Banking Emission Reduction Credits (ERC's) .....                               | 4/5/00               |
|          |   | 5/1/94               |
| 470.     | Permit Application Fees for Tier II Permits .....   | 3/7/95               |
| 500.     | Registration Procedures and Requirements for Portable Equipment .....                           | 5/1/94               |
| 510.     | Stack Heights and Dispersion Techniques .....   | 5/1/94               |
| 511.     | Applicability .....   | 4/5/00               |
| 512.     | Definitions .....   | 4/5/00               |
|          |   | 5/1/94               |
| 513.     | Requirements .....  | 4/5/00               |
| 514.     | Opportunity for Public Hearing .....  | 5/1/94               |
| 515.     | Approval of Field Studies and Fluid Models .....  | 5/1/94               |
| 516.     | No Restriction on Actual Stack Height .....   | 5/1/94               |
| 550.     | Air Pollution Emergency Rule .....  | 5/1/94               |
| 551.     | Episode Criteria .....  | 5/1/94               |
| 552.     | Stages .....  | 3/15/02              |
|          |   | 5/1/94               |
| 553.     | Effect of Stages .....  | 3/15/02              |
| 556.     | Criteria for Defining Levels Within Stages .....  | 3/15/02              |
|          |   | 4/5/00               |
| 557.     | Public Notification .....   | 5/1/94               |
| 558.     | Information to Be Given .....   | 3/15/02              |
|          |   | 5/1/94               |
| 559.     | Manner and Frequency of Notification .....  | 5/1/94               |
| 560.     | Notification to Sources .....   | 4/5/00               |
| 561.     | General Rules .....   | 3/15/02              |
|          |   | 4/5/00               |
|          |   | 5/1/94               |
| 562.     | Specific Emergency Episode Abatement Plans for Point Sources .....                              | 5/1/94               |
| 563.     | Transportation Conformity .....   | 3/30/01              |
| 564.     | Incorporation by Reference .....  | 3/30/01              |
| 565.     | Abbreviations .....   | 3/30/01              |
| 566.     | Definitions for the Purpose of Sections 563 Through 574 and 582 .....                           | 3/30/01              |
| 567.     | Agencies Affected by Consultation .....   | 3/30/01              |
| 568.     | ICC Member Roles in Consultation .....  | 3/30/01              |
| 569.     | ICC Member Responsibilities in Consultation .....   | 3/30/01              |
| 570.     | General Consultation Process .....  | 3/30/01              |
| 571.     | Consultation Procedures .....   | 3/30/01              |
| 572.     | Final Conformity Determinations by USDOT .....  | 3/30/01              |
| 573.     | Resolving Conflicts .....   | 3/30/01              |
| 574.     | Public Consultation Procedures .....  | 3/30/01              |
| 575.     | Air Quality Standards and Area Classification .....   | 4/5/00               |
| 576.     | General Provisions for Ambient Air Quality Standards .....                                      | 5/1/94               |
| 577.     | Ambient Air Quality Standards for Specific Air Pollutants (Except subsection 577.06) .....      | 5/1/94               |
| 578.     | Designation of Attainment, Unclassifiable, and Nonattainment Areas .....                        | 5/1/94               |
| 579.     | Baselines for Prevention of Significant Deterioration .....                                     | 4/5/00               |
|          |   | 5/1/94               |
| 580.     | Classification of Prevention of Significant Deterioration Areas .....                           | 4/5/00               |
|          |   | 5/1/94               |
| 581.     | Prevention of Significant Deterioration (PSD) Increments .....                                  | 4/5/00               |
|          |   | 7/1/97               |
|          |   | 5/1/94               |
| 582.     | Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM-10 ..... | 3/30/01              |
| 600.     | Rules for Control of Open Burning .....   | 3/19/99              |

| Citation | Title   | State effective date |
|----------|---|----------------------|
| 601.     | Fire Permits, Hazardous Materials and Liability .....                       | 5/1/94               |
| 602.     | Nonpreemption of Other Jurisdictions .....                                  | 5/1/94               |
| 603.     | General Restrictions .....  | 5/1/94               |
| 604.     | Alternatives to Open Burning .....  | 5/1/94               |
| 606.     | Categories of Allowable Burning .....                                       | 5/1/94               |
| 607.     | Recreational and Warming Fires .....  | 5/1/94               |
| 608.     | Weed Control Fires .....  | 5/1/94               |
| 609.     | Training Fires .....  | 5/1/94               |
| 610.     | Industrial Flares .....   | 5/1/94               |
| 611.     | Residential Solid Waste Disposal Fires .....                                | 5/1/94               |
| 612.     | Landfill Disposal Site Fires .....  | 3/19/99              |
| 613.     | Orchard Fires .....   | 4/5/00               |
|          |   | 5/1/94               |
| 614.     | Prescribed Burning .....  | 5/1/94               |
| 615.     | Dangerous Material Fires .....  | 5/1/94               |
| 616.     | Infectious Waste Burning .....  | 5/1/94               |
| 625.     | Visible Emissions .....   | 4/5/00               |
|          |   | 5/1/94               |
| 626.     | General Restrictions on Visible Emissions from Wigwam Burners .....         | 4/5/00               |
| 650.     | Rules for Control of Fugitive Dust .....                                    | 5/1/94               |
| 651.     | General Rules .....   | 5/1/94               |
| 675.     | Fuel Burning Equipment—Particulate Matter .....                             | 4/5/00               |
| 676.     | Standards for New Sources .....   | 5/1/94               |
| 677.     | Standards for Minor and Existing Sources .....                              | 5/1/94               |
| 678.     | Combinations of Fuels .....   | 5/1/94               |
| 679.     | Averaging Period .....  | 4/5/00               |
|          |   | 5/1/94               |
| 680.     | Altitude Correction .....   | 5/1/94               |
| 681.     | Test Methods and Procedures .....   | 4/5/00               |
| 700.     | Particulate Matter—Process Weight Limitations .....                         | 4/5/00               |
| 701.     | Particulate Matter—New Equipment Process Weight Limitations .....           | 4/5/00               |
| 702.     | Particulate Matter—Existing Equipment Process Weight Limitations .....      | 4/5/00               |
|          |   | 5/1/94               |
| 703.     | Particulate Matter—Other Processes .....                                    | 4/5/00               |
| 725.     | Rules for Sulfur Content of Fuels .....                                     | 4/5/00               |
| 726.     | Definitions as Used in Sections 727 Through 729 .....                       | 5/1/94               |
| 727.     | Residual Fuel Oils .....  | 5/1/94               |
| 728.     | Distillate Fuel Oil .....   | 5/1/94               |
| 729.     | Coal .....  | 5/1/94               |
| 785.     | Rules for Control of Incinerators .....                                     | 5/1/94               |
| 786.     | Emission Limits .....   | 4/5/00               |
| 787.     | Exceptions .....  | 3/23/98              |
| 805.     | Rules for Control of Hot-mix Asphalt Plants .....                           | 5/1/94               |
| 806.     | Emission Limits .....   | 5/1/94               |
| 807.     | Multiple Stacks .....   | 5/1/94               |
| 808.     | Fugitive Dust Control .....   | 5/1/94               |
| 815.     | Rules for Control of Kraft Pulping Mills .....                              | 5/1/94               |
| 816.     | Statement of Policy .....   | 5/1/94               |
| 817.     | General Rules .....   | 5/1/94               |
| 821.     | Recovery Furnace Particulate Standards .....                                | 5/1/94               |
| 822.     | Lime Kiln Standards .....   | 5/1/94               |
| 823.     | Smelt Tank Standards .....  | 5/1/94               |
| 824.     | Monitoring and Reporting (Except subsection 824.01) .....                   | 4/5/00               |
|          |   | 5/1/94               |
| 825.     | Special Studies .....   | 5/1/94               |
| 826.     | Exceptions .....  | 5/1/94               |
| 845.     | Rules for Control of Sulfur Oxide Emissions from Sulfuric Acid Plants ..... | 5/1/94               |
| 846.     | Emission Limits .....   | 4/5/00               |
| 847.     | Monitoring and Testing .....  | 4/5/00               |
| 848.     | Compliance Schedule .....   | 5/1/94               |

5. Section 52.681 is revised to read as follows:

**§ 52.681 Permits to construct and tier II operating permits.**

(a) Except as otherwise provided in paragraph (b) of this section, emission limitations and other provisions contained in Permits to Construct and

Tier II Operating Permits issued by the Idaho Department of Environmental Quality in accordance with the Federally-approved State of Idaho Rules for Control of Air Pollution in Idaho, incorporated by reference in section 52.670 (IDAPA 58.01.01.200 through 222, IDAPA 58.01.01.400 through 406), shall be applicable requirements of the

Federally-approved Idaho SIP (in addition to any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

(b) Operating Permits authorizing the use of alternative emission limits (bubbles) under IDAPA

58.01.01.401.01.a, 58.01.01.440, and 58.01.01.441 (including the use of banked emission reduction credits in a bubble pursuant to IDAPA 58.01.01.461), and Tier II Operating Permits authorizing compliance schedule extensions under IDAPA 58.01.01.401.04 must be submitted to EPA for approval as revisions to the Idaho SIP before they become applicable requirements of the Idaho SIP.

6. Section 52.683 is revised to read as follows:

**§ 52.683 Significant deterioration of air quality.**

(a) The State of Idaho Rules for Control of Air Pollution in Idaho, specifically, IDAPA 58.01.01.005 through 007 (definitions), IDAPA 58.01.01.200 through 222 (permit to construct rules), IDAPA 58.01.01.510 through 516 (stack height rules), and IDAPA 58.01.01.575 through 581

(standards, increments and area designations) are approved as meeting the requirements of title I, part C, subpart 1 of the Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of title I, part C, subpart 1 of the Clean Air Act are not met for Indian reservations because Idaho has not demonstrated authority to implement and enforce under the Clean Air Act Idaho State rules in Indian country. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated and made part of the applicable plan for Indian country in the State of Idaho.

(c) The requirements of section 165 of the Clean Air Act are not met for sources subject to prevention of significant deterioration requirements prior to August 22, 1986, the effective date of EPA's original approval of

Idaho's prevention of significant deterioration regulations.

Therefore, the provisions of § 52.21(b), (c), (d), and (h) through (w) are hereby incorporated and made part of the applicable plan for sources subject to § 52.21 prior to August 22, 1986.

Part 81, subpart C, title 40 of the Code of Federal Regulations is amended as follows:

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.313, the table entitled "Idaho-TSP" is removed and the table entitled "Idaho PM-10" is revised to read as follows:

**§ 81.313 Idaho.**

\* \* \* \* \*

IDAHO PM-10

| Designated area   | Designation |                   | Classification |           |
|---|-------------|-------------------|----------------|-----------|
|   | Date        | Type              | Date           | Type      |
| Eastern Idaho Intrastate AQCR 61:   |             |                   |                |           |
| Power-Bannock Counties, part of: (Pocatello) .....  | 11/15/90    | Nonattainment ... | 11/15/90       | Moderate  |
| State Lands—Portneuf Valley Area:   |             |                   |                |           |
| T.5S, R.34E Sections 25–36  |             |                   |                |           |
| T.5S, R.35E Section 31  |             |                   |                |           |
| T.6S, R.34E Sections 1–36   |             |                   |                |           |
| T.6S, R.35E Sections 5–9, 16–21, 28–33, plus the West ½ of Sections 10, 15, 22, 27, 34  |             |                   |                |           |
| T.7S, R.34E Sections 1–4, 10–14, and 24   |             |                   |                |           |
| T.7S, R.35E Sections 4–9, 16–21, 28–33, plus the West ½ of Sections 3, 10, 15, 22, 27, 34   |             |                   |                |           |
| T.8S, R.35E Section 4, plus the West ½ of Section 3   |             |                   |                |           |
| Power-Bannock Counties, part of: (Pocatello) .....  | 11/15/90    | Nonattainment ... | 11/15/90       | Moderate  |
| Fort Hall Indian Reservation:   |             |                   |                |           |
| T.5S, R.34E Sections 15–23  |             |                   |                |           |
| T.5S, R.33E Sections 13–36  |             |                   |                |           |
| T.6S, R.33E Sections 1–36   |             |                   |                |           |
| T.7S, R.33E Sections 4, 5, 6  |             |                   |                |           |
| T.7S, R.34E Section 8   |             |                   |                |           |
| Pocatello: 336 square mile area from Schiller at the northwest to Inkom at southeast, excluding the Portneuf Valley and Fort Hall nonattainment areas.  | 11/15/90    | Unclassifiable.   |                |           |
| Soda Springs: 96 square mile area encompassing Soda Springs, Conda and the industrial area in between.  | 11/15/90    | Unclassifiable.   |                |           |
| Remainder of AQCR 61 .....  | 11/15/90    | Unclassifiable.   |                |           |
| Eastern Washington-Northern Idaho Interstate AQCR 62 (Idaho portion):   |             |                   |                |           |
| Shoshone County: Pinehurst Expansion Area Northwest quarter of the Northwest quarter, Section 8, Township 48 North, Range 2 East; Southwest quarter of the Northwest quarter, Section 8, Township 48 North, Range 2 East; Northwest quarter of the Southwest quarter, Section 8, Township 48 North, Range 2 East; Southwest quarter of the Southwest quarter, Section 8, Township 48 North, Range 2 East; Boise Base (known as "Pinehurst expansion area"). | 11/20/94    | Nonattainment ... | 1/20/94        | Moderate. |
| City of Pinehurst .....   | 11/15/90    | Nonattainment ... | 11/15/90       | Moderate. |
| Silver Valley (Shoshone County), excluding the Pinehurst Expansion Area and City of Pinehurst PM-10 nonattainment areas.  | 11/15/90    | Unclassifiable.   |                |           |
| Lewiston .....  | 11/15/90    | Unclassifiable.   |                |           |
| Remainder of AQCR 62 (Idaho portion) .....  | 11/15/90    | Unclassifiable.   |                |           |
| Idaho Intrastate AQCR 63:   |             |                   |                |           |
| Bonner County: Sandpoint Area: Section 1–3, 9–12, 15, 16, 21, 22, 27, 28 of range 2 west and Township 57 north; and the western ¾ of Sections 14, 23 and 26 of the same Township and range coordinates.   | 11/15/90    | Nonattainment ... | 11/15/90       | Moderate. |

IDAHO PM-10—Continued

| Designated area   | Designation |                    | Classification                  |                                   |
|---|-------------|--------------------|---------------------------------|-----------------------------------|
|   | Date        | Type               | Date                            | Type                              |
| Remainder of AQCR 63 .....  | 11/15/90    | Unclassifiable.    |                                 |                                   |
| Metropolitan Boise the Intrastate AQCR 64:<br>Ada County: Boise .....   | 3/12/99     | Pre-existing ..... | 3/12/99<br>PM-10<br>NAAQS<br>NA | Pre-existing<br>PM-10<br>NAAQS NA |
| <p><i>Northern Boundary</i>—Beginning at a point in the center of the channel of the Boise River, where the line between sections 15 and 16 in Township 3 north (T3N), range 4 east (R4E), crosses said Boise River; thence, west down the center of the channel of the Boise River to a point opposite the mouth of More's Creek; thence, in a straight line north 44 degrees and 38 minutes west until the said line intersects the north line T5N (12 Ter. Ses. 67); thence west to the northwest corner T5N, R1W.</p> <p><i>Western Boundary</i>—Thence, south to the northwest corner of T3N, R1W; thence east to the northwest corner of section 4 of T3N, R1W; thence south to the southeast corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence, south to the southwest corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence south to the southwest corner of T1N, R1W.</p> <p><i>Southern Boundary</i>—Thence, east to the southwest corner of section 33 of T1N, R4E.</p> <p><i>Eastern Boundary</i>—Thence, north along the north and south center line of Townships T1N, R4E, T2N, R4E, and T3N, R4E, Boise Meridian to the beginning point in the center of the channel of the Boise River.</p> |             |                    |                                 |                                   |
| Remainder of AQCR 64 .....  | 11/15/90    | Unclassifiable..   |                                 |                                   |

\* \* \* \* \*  
[FR Doc. 03-856 Filed 1-15-03; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[OAR-2002-0047; FRL-7418-2]

RIN 2060-AH13

**National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills**

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

**ACTION:** Final rule.

**SUMMARY:** This action promulgates national emission standards for hazardous air pollutants (NESHAP) for municipal solid waste (MSW) landfills. The final rule is applicable to both major and area sources and contains the same requirements as the Emission Guidelines and New Source Performance Standards (EG/NSPS). The

final rule adds startup, shutdown, and malfunction (SSM) requirements, adds operating condition deviations for out-of-bounds monitoring parameters, requires timely control of bioreactor landfills, and changes the reporting frequency for one type of report.

The final rule fulfills the requirements of section 112(d) of the Clean Air Act (CAA), which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b), and helps implement the Urban Air Toxics Strategy developed under section 112(k) of the CAA. The intent of the standards is to protect the public health by requiring new and existing sources to control emissions of HAP to the level reflecting the maximum achievable control technology (MACT).

The HAP emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. Each of the HAP emitted from MSW landfills can cause adverse health effects provided sufficient exposure. For example, vinyl chloride can adversely affect the central nervous system and

has been shown to increase the risk of liver cancer in humans, while benzene is known to cause leukemia in humans.

**EFFECTIVE DATE:** January 16, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning the development of the final rule, contact Ms. JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division (C439-03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-5671, facsimile number (919) 541-0246, electronic mail address [collins.jolynn@epa.gov](mailto:collins.jolynn@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Categories and entities potentially regulated by this action:

| Category   | NAICS code | SIC code | Examples of potentially regulated entities |
|--|------------|----------|--|
| Industry: Air and water resource and solid waste management. | 924110     | 9511     | Solid waste landfills.                     |
| Industry: Refuse systems—solid waste landfills .....         | 562212     | 4953     | Solid waste landfills.                     |