

Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from miscellaneous metal parts coating, aerospace assembly and component manufacture and coating, pleasure craft coating and boatyard operations, and resin manufacturing. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by September 12, 2002.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 1001 "I" Street,  
Sacramento, CA 95814;  
South Coast Air Quality Management  
District, 21865 East Copley Drive,  
Diamond Bar, CA 91765; and,  
Ventura County Air Pollution Control  
District, 669 County Square Drive,  
Ventura, CA, 93993.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4111.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: SCAQMD Rule 1141—Control of Volatile Organic Compound Emissions From Resin Manufacturing; SCAQMD Rule 1124—Aerospace Assembly and Component Manufacturing Operations; SCAQMD Rule 1107—Coating of Miscellaneous Metal Parts and Products; and, VCAPCD Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be

severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 16, 2002.

**Keith Takata,**

*Associate Regional Administrator, Region IX.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IN 143-1b; FRL-7249-3]

#### Approval and Promulgation of Implementation Plans; Indiana

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

**ACTION:** Proposed rule.

**SUMMARY:** The United States Environmental Protection Agency (EPA) approves into the Indiana State Implementation Plan (SIP) revisions to the Indiana Administrative Code. These regulatory updates change rule language concerning Indiana's permitting programs. Included in this submittal is a provision to assure that applicable requirements exist independently of title V permits. EPA is proposing to approve these rules because they are consistent with EPA's regulations governing State permit programs.

In a separate action in the "Rules and Regulations" section of this **Federal Register**, EPA is approving these revisions into the State Implementation Plan as a direct final rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. The EPA has explained reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse written comments, EPA will take no further action on this proposed rule. If EPA receives adverse written comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action.

Any parties interested in commenting must do so at this time.

**DATES:** Written comments must be received by September 12, 2002.

**ADDRESSES:** Written comments should be addressed to Ms. Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Attention: Mr. Sam Portanova, at the EPA Region 5 office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following location: Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Anyone wanting to examine these documents should make an appointment at least two working days in advance by contacting Sam Portanova.

**FOR FURTHER INFORMATION CONTACT:** Sam Portanova, Environmental Engineer, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, telephone (312) 886-3189.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Rule which is published in the Rules and Regulations section of this **Federal Register**.

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

Dated: June 28, 2002.

**Jo Lynn Traub,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02-20346 Filed 8-12-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[ID-02-002; FRL-7258-7]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA invites public comment on its proposal 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 also invites public comment on its proposal to revoke the total suspended particulates (TSP) area designations for Idaho in 40 CFR part 81 and adjust the PM-10 area designations to conform to the requirements of EPA's prevention of significant deterioration (PSD) regulations.

**DATES:** Written comments must be received on or before September 12, 2002.

**ADDRESSES:** Written comments should be addressed to: David C. Bray, EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this proposed 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.

**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:**

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**I. Background**

On November 15, 1990, Congress amended the Clean Air Act (CAA) 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). Under the provisions of the Act, revisions to title I, part D (nonattainment area) new source review (NSR) rules were required to be submitted by June 30, 1992 for PM-10 nonattainment areas, by November 15, 1992 for most ozone and carbon monoxide nonattainment areas, and by November 15, 1993 for the remainder of the ozone and carbon monoxide nonattainment areas. 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.

The Clean Air Act Amendments of 1990 also established a new Title V which requires States to develop operating permit programs for most stationary sources. Although Title V operating permit programs are not intended to be part of the SIP, many provisions of the SIP interact closely with the Title V operating permit program. As such, Idaho, like many States, revised provisions of its SIP to facilitate and improve the relationship between the Idaho SIP and Title V operating permit program. 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 has 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.

**II. Discussion of SIP Submittal**

*A. Description of SIP Submittals*

On May 17, 1994, the Director of the IDEQ submitted IDAPA 16, Title 01, Chapter 01 "Rules for the Control of Air

Pollution in Idaho" (with the exception of sections 009, 010, 140 through 149, 161, 203.03, 210, 220.05, 221.04.a.i, 222.04.b, 225, 585, 586, 587, 590, 591, and 855 through 858), as amended on May 1, 1994, as a revision to the Idaho SIP. On May 11, 1995, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 008, 313, 314, 525, 526, 527, 530, and 537; and new sections 317 and 470), as amended on March 3, 1995, March 7, 1995, and May 1, 1995, as revisions to the Idaho SIP. On November 21, 1996, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 130, 131, 132, 133, 134, 135, 136, 209, 220, 222, 313, 314, and 332; and the rescission of sections 326 through 331), as amended on November 4, 1996, as revisions to the Idaho SIP. On February 28, 1997, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to section 107), as amended on February 28, 1997, as revisions to the Idaho SIP. On December 18, 1997, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 007, 125, 126, 136, 201, 202, 205, 209, 213, 787, and 788), as amended on November 17, 1997, as revisions to the Idaho SIP. On April 9, 1998, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 008, 107, 202, 577, 579, 581, and 751), as amended on June 21, 1996, and amendments to IDAPA 16, title 01, chapter 01, section 107, as amended on February 12, 1998, as revisions to the Idaho SIP. On May 5, 1999, the Director submitted amendments to IDAPA 16, title 01, chapter 01 (specifically, changes to sections 006, 007, 008, 107, 122, 128, 130, 131, 132 through 136, 155, 157, 160, 200, 201 through 202, 204 through 205, 208, 209, 210, 213, 220 through 223, 401, 402, 404, 440 through 441, 460 through 461, 511 through 513, 526 through 561, 575, 577, 579, 580 through 581, 590, 600, 612, 613, 625, 626, 675, 679, 681, 700, 701 through 703, 725, 786, 824, 846, and 847), as amended on November 12, 1998 and April 22, 1999, as revisions to the Idaho SIP. On December 5, 2000, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 008, 107, 128, 201, 301, 313, 586, and new sections 563 through 574), as amended on November 18, 1999, October 18, 2000, and November 9, 2000, as revisions to the

Idaho SIP. Note that IDAPA 16 was recodified as IDAPA 58 prior to the December 5, 2000 submittal. Finally, on May 30, 2002, the Director submitted amendments to IDAPA 58, Title 01, Chapter 01 (specifically, changes to sections 552, 553, 556, 558, and 561) as amended on November 8, 2001, as revisions to the Idaho SIP.

As discussed above, the Idaho rules have been renumbered and recodified and numerous editorial and technical changes have been made throughout. The following sections of the amended rules include substantive changes to the respective sections of the currently-approved SIP: Section 107 INCORPORATION BY REFERENCE; Section 121 COMPLIANCE REQUIREMENTS BY DEPARTMENT; Section 128 CONFIDENTIAL INFORMATION; Sections 130 through 136 STARTUP, SHUTDOWN, SCHEDULED MAINTENANCE, SAFETY MEASURES, UPSET AND BREAKDOWN; Section 157 SAMPLING AND ANALYTICAL PROCEDURES; Section 160 PROVISIONS GOVERNING SPECIFIC ACTIVITIES AND CONDITIONS; Sections 200 through 224 PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT; Sections 400 through 406 PROCEDURES AND REQUIREMENTS FOR TIER II OPERATING PERMITS; Section 440 REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES); Section 441 DEMONSTRATION OF AMBIENT EQUIVALENCE; Section 460 REQUIREMENTS FOR EMISSION REDUCTION CREDIT; Section 461 REQUIREMENTS FOR BANKING EMISSION REDUCTION CREDITS; Sections 550 through 562 AIR POLLUTION EMERGENCY RULE; Section 575 AIR QUALITY STANDARDS AND AREA CLASSIFICATION; Section 577 AMBIENT AIR QUALITY STANDARDS FOR SPECIFIC AIR POLLUTANTS; Section 579 BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION; Section 580 CLASSIFICATION OF PREVENTION OF SIGNIFICANT DETERIORATION AREAS; and Section 581 PREVENTION OF SIGNIFICANT DETERIORATION INCREMENTS.

The amended rules also include the following new sections which are revised and recodified provisions from the previous rules: Section 005 DEFINITIONS; Section 006 GENERAL DEFINITIONS; Section 007 DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 225 AND 400 THROUGH 461; and Section 700 PARTICULATE MATTER—PROCESS WEIGHT LIMITATIONS.

The amended rules include the following entirely new sections: Section 002 WRITTEN INTERPRETATIONS; Section 003 ADMINISTRATIVE APPEALS; Section 004 CATCHLINES; Section 106 ABBREVIATIONS; Section 008 DEFINITIONS FOR PURPOSES OF SECTIONS 300 THROUGH 387; Section 122 INFORMATION ORDERS BY THE DEPARTMENT; Section 123 CERTIFICATION OF DOCUMENTS; Section 124 TRUTH, ACCURACY AND COMPLETENESS OF DOCUMENTS; Section 125 FALSE STATEMENTS; Section 126 TAMPERING; Section 213 PRE-PERMIT CONSTRUCTION, Sections 300 through 387 PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS; Section 470 PERMIT APPLICATION FEES FOR TIER II PERMITS; Sections 563 through 574 TRANSPORTATION CONFORMITY; Section 582 INTERIM CONFORMITY PROVISIONS FOR NORTHERN ADA COUNTY FORMER NONATTAINMENT AREA; Section 681 TEST METHODS AND PROCEDURES; and Section 703 PARTICULATE MATTER—OTHER PROCESSES. Finally, the amended rules delete the following sections of the current EPA-approved SIP: Section 01.01001 POLICY; Section 01.01052.03 CRITERIA FOR DEFINING EPISODE STAGES; Section 01.01503 DESIGN STANDARDS; Sections 01.01551 to 01.01553 RULES FOR CONTROL OF MOTOR VEHICLES; Section 01.01996 ADMINISTRATIVE PROVISIONS; Section 01.01998 INCLUSIVE GENDER AND NUMBER; and Section 01.01999 SEVERABILITY.

#### *B. Key Changes to Idaho's SIP*

Included in the docket for this SIP action is a table showing all of the provisions of IDAPA Chapter 16, now codified at IDAPA Chapter 58, and showing the type of change made to the provisions (e.g., new section, amended, editorial change, unchanged, relocated, deleted). The table also indicates those 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. For example, several provisions or parts of IDEQ's air rules are not designed to attain and maintain the NAAQS, but instead are designed to implement other CAA programs, such as the Title V air operating permits program, New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs), or are designed to implement other provisions of State law, and are not appropriate for inclusion in the SIP.

In addition, the docket includes a Technical Support Document (TSD), which describes in more detail the substantive changes to the Idaho rules that have been submitted by Idaho as revisions to the SIP, EPA's evaluation of how these rules comply with EPA's minimum requirements for SIPs, and the basis for EPA's proposed action. A summary of the key changes to Idaho's rules and EPA's proposed action follows.

#### 1. Excess Emissions Rules

IDEQ has substantially revised its provisions addressing excess emissions attributable to startup, shutdown, scheduled maintenance, safety measures, upset, and breakdown. Previously, excess emissions due to such events were not deemed to be violations if such events were promptly reported and reasonable corrective actions were taken with all practicable speed. As revised, sections 130 to 136 establish procedures and requirements that must be followed in all cases of excess emissions due to such events, including the filing of procedures to be taken to minimize emissions, prompt reporting of excess emissions, and taking prompt corrective action. Idaho's rules make clear, however, that emissions in excess of emission limits are considered violations and are not automatically excused. Instead, section 131 contains criteria to be used in determining whether the Department should take enforcement action to impose penalties for excess emissions due to such events. EPA believes Idaho's provisions for excess emissions are consistent with EPA's interpretation of the CAA, as set forth in a guidance document EPA issued to States regarding excess emissions during startup, shutdown, and malfunctions. See Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Monitoring, and Robert Perciasepe, Assistant Administrator for Air And Radiation, to the Regional Administrators, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999).

#### 2. Permit to Construct Rules

EPA is proposing to approve those portions of IDAPA 58, Title 01, Chapter 01 that relate to the permitting of new and modified stationary sources (specifically, Section 000. LEGAL AUTHORITY; Section 002. WRITTEN INTERPRETATIONS; Section 003. ADMINISTRATIVE APPEALS; Section 006. DEFINITIONS; Section 007

DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 225 AND 400 THROUGH 461; Section 107. INCORPORATIONS BY REFERENCE, subsections .03.a., .03.e., .03.f., and .03.i.; Sections 200 through 222. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT (except for subsection 222.03); Section 460. REQUIREMENTS FOR EMISSION REDUCTION CREDIT; Section 461. REQUIREMENTS FOR BANKING EMISSION REDUCTION CREDITS (ERC'S); Sections 510 through 516. STACK HEIGHTS AND DISPERSION TECHNIQUES; Section 578. DESIGNATION OF ATTAINMENT, UNCLASSIFIABLE, AND NONATTAINMENT AREAS; Section 579. BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION; Section 580. CLASSIFICATION OF PREVENTION OF SIGNIFICANT DETERIORATION AREAS; and Section 581. PREVENTION OF SIGNIFICANT DETERIORATION INCREMENTS).

The current SIP-approved permit to construct rules have been amended throughout, primarily to bring them up to date with EPA's current regulations, to make them more consistent with EPA requirements for construction permits, and to make them more consistent with the Title V operating permit program. The majority of the amendments involve the permit to construct provisions for major stationary sources and major modifications (the prevention of significant deterioration (PSD), nonattainment area (part D), and visibility protection programs). Changes have been made to the applicability provisions (section 201), application requirements (section 202), permit requirements for new major facilities and major modifications in nonattainment areas (section 204), permit requirements for new major facilities and major modifications in attainment or unclassifiable areas (section 205), requirements for emission reduction credit (section 207), demonstration of net air quality benefit (section 208), procedures for issuing permits (section 209), and conditions for permits to construct (section 211). EPA has reviewed these amendments and finds them to be consistent with the requirements of EPA's regulations, specifically, 40 CFR 51.160 through 51.164 for minor source construction permits, 40 CFR 51.165 for nonattainment area (part D) permits, 40 CFR 51.166 for PSD permits, and 40 CFR 51.301 and 51.307 for visibility protection permits to construct.

Two new provisions of the Idaho permit to construct rules, however, require specific consideration—Section

213. PRE-PERMIT CONSTRUCTION, and sections 220 through 222, which provide exemptions from the minor source permits-to-construct rules.

*Construction Prior to Final Permit Issuance.* Section 213, entitled "Pre-Permit Construction," allows construction to commence on certain non-major sources and non-major modifications prior to receiving a final permit to construct, provided certain conditions are met. EPA believes that this provision is consistent with the requirements of section 110(a)(2)(C) of the CAA and 40 CFR 51.160, including 40 CFR 51.160(b), which requires States to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS. Idaho's "Pre-Permit Construction" provision has numerous requirements and safeguards to ensure that no major source or major modification would be allowed to commence construction prior to receiving its final permit to construct. Furthermore, Idaho's rule does not allow sources which propose to "net out" of major NSR, use offsets to mitigate unacceptable ambient impacts, or which could impact a Class I area, to commence construction prior to receiving final permits. The provision also includes numerous requirements which are intended to limit its applicability to sources which have sufficiently demonstrated that they will be able to comply with all requirements and therefore will be able to receive a final permit to construct. These include more comprehensive and rigorous permit applications (including dispersion modeling meeting EPA's Guideline for Air Quality Models) than would normally be required of minor sources and minor modifications; a requirement to hold a public meeting in the community; and written approval of the Department before it can commence construction on this provision. Importantly, the provision precludes any actual operation of the new or modified source before the final permit to construct is issued. Finally, the provision includes language intended to prevent sources from making equitable arguments should the final permit be denied, or include conditions inconsistent with the application to construct. The provision also makes it clear that if the permit is ultimately denied, the source has been in violation of the requirement to have a permit from the date that it actually commenced construction. It is important to note that Idaho does not have a requirement for

a case-by-case control technology determination (e.g., BACT) for new or modified minor sources, so the likelihood of equity in the ground arguments are significantly reduced.

Idaho's "Pre-Permit Construction" provision would allow sources which are requesting limits on their potential to emit (PTE) (both greenfield sources proposing to be synthetic minors and existing sources proposing to limit the PTE of a modification) to commence construction prior to receiving final permits to construct. Under the terms of this provision, the written approval issued by IDEQ is an administrative action that makes the PTE limits requested by the source enforceable by the State. However, since the written approval is not a final permit to construct and has not been through the public notice and comment process, it is not federally enforceable. But because Federal law does not currently require that PTE limits be federally enforceable to be effective in limiting a source's potential to emit, EPA believes that this aspect of the Idaho provision meets EPA's current requirements. (Note that permits to construct issued under the EPA-approved Idaho rules are federally enforceable in accordance with section 113 of the Act.)

Although this provision is somewhat different than the traditional minor new source review programs in most States, EPA believes it is consistent with the requirements of the CAA and EPA's regulations, and is therefore approvable as a SIP revision. Section 110(a)(2)(C) of the CAA requires that State SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are achieved. This Idaho provision clearly regulates the construction and modification of stationary sources and ensures that the NAAQS will be met for any source which is allowed to commence construction prior to obtaining a final permit to construct.

In addition, EPA's 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. SIP minor NSR programs in several States do not require permits prior to construction, but instead require sources to submit a notice and authorize sources to begin construction after a specified time if the permitting authority does not issue an order preventing construction. As discussed above, this Idaho provision

includes enforceable procedures to prevent the construction of any source or modification that would violate SIP requirements or the NAAQS because a source cannot begin actual construction unless it has received an approval from the State in the form of either a written approval under this provision or an actual permit to construct. In fact, the permit application requirements of Idaho's "Pre-Permit Construction" provision are more stringent than those of Idaho's general minor NSR provisions, and sources which utilize this pre-permit construction provision must meet a higher hurdle than other minor NSR permit applicants in Idaho in demonstrating that they comply with all requirements.

While EPA has some concerns regarding the implementation of this provision, it nevertheless meets EPA's requirements for a minor source permit to construct rule. However, in order to ensure that sources do not inappropriately begin construction using this provision, EPA is proposing to approve this rule with the condition that IDEQ submit to EPA, within five (5) working days of issuance, copies of all written approvals, draft permits, and final permits for sources which utilize this provision. EPA specifically invites comments on the appropriateness of approving this provision into the Idaho SIP.

"*De Minimis*" Exemptions from minor NSR. The Idaho permit to construct rules exempt non-major sources from permitting requirements if they meet *all* of several criteria. These criteria are:

- (1) The source's uncontrolled potential to emit must be less than 100 tpy (section 220.01.a.i);
- (2) the source's uncontrolled potential to emit must not increase emissions of a major facility by more than the significant emission rates (section 220.01.a.ii);
- (3) the modeled impact of the source's uncontrolled potential to emit must not cause or contribute to a NAAQS violation (section 220.01.a.iii);
- (4) the source cannot be part of a new major facility or a major modification of an existing major facility (section 220.01.b); and
- (5) either the controlled potential emissions must be "below regulatory concern," which is generally defined as less than 10% of the significant emission rates (section 221) or the source must be on a list of categorically exempt sources (section 222).

EPA believes States may exempt from minor new source review certain categories of changes based on *de minimis* or administrative necessity grounds in accordance with the criteria

set out in *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979). *De minimis* sources are presumed not to have an impact and their emissions would not prevent or interfere with attainment of the NAAQS, even within nonattainment areas. Criteria (1), (2), (4), and (5) set forth above are generally consistent with the approaches used by other States to exempt minor sources and minor modifications from permit to construct requirements. These provisions are intended to ensure that all major sources and major modifications are subject to permit to construct requirements and that only *de minimis* sources are exempted.

Criteria (3) and one aspect of criteria (5), however, merit further discussion. Criteria (3), section 220.01.a.iii. requires that, to be exempt from minor NSR permitting in Idaho, the modeled impact of the source's uncontrolled potential to emit will not cause or contribute to a NAAQS violation. A requirement to conduct modeling is usually an element of the permitting process, subject to review by the permitting authority, and is not typically included as a criteria that a source must meet to qualify for an exemption from the permitting process. Because this criteria is included in an exemption determination that is made in the first instance by the source, the determination of whether a source needs a permit depends in part on the source's own analysis of whether it would cause a NAAQS violation—that is, a source that determines that it will not cause an air quality problem and which meets the other four criteria, does not need to apply for a permit to construct.

Idaho indicates that the purpose of this modeling provision is to ensure that sources which would individually have *de minimis* impacts do not in fact cause or contribute to violations when located in or near areas which are marginally attaining the NAAQS. Idaho notes that sources which meet all of the other criteria would normally qualify as *de minimis* and could be exempted completely from minor NSR without having to model compliance with NAAQS prior to being exempted.

EPA has carefully reviewed the list of categorically exempt sources and the "below regulatory concern" levels in sections 221, 222.01, and 222.02 and believes that these categories and levels are consistent with what has been approved elsewhere for purposes of exempting *de minimis* sources from minor NSR requirements. As a result, Idaho's requirement for self-modeling as an additional exemption criterion only further narrows exemption provisions which would be approvable even

without the modeling provision. EPA proposes to approve this provision as part of Idaho's SIP. However, EPA feels that it is important to point out that this provision establishes a federally-enforceable requirement and that sources are subject to EPA enforcement or citizen suit if they fail to perform the necessary modeling and/or keep adequate records.

With respect to criteria (5), EPA is concerned with section 222.03, a provision which allows Idaho to add individual sources to the categorical insignificant list without rulemaking or SIP revision. Idaho has explained that the purpose of section 222.03 is to be able to exempt individual sources which meet criteria (1) through (4) above, but may marginally exceed the "below regulatory concern" levels and whose source categories were not evaluated at the time of rulemaking for inclusion on the list of categorically insignificant sources. EPA does not believe that section 222.03 is approvable. CAA section 110(a)(2)(C) and 40 CFR 51.160(a) require the State to develop legally enforceable procedures to review new and modified sources. In addition, 40 CFR 51.160(e) specifically requires the SIP to identify the types and sizes of sources which are subject to review under the State's new source review program. A provision which authorizes the State to grant additional exemptions without a SIP revision is contrary to the requirements of the CAA and its implementing regulations. Section 110(i) of the CAA specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. See CAA section 110(l); 40 CFR 51.104. The "director's discretion" provision of section 222.03 does not meet all of the requirements of section 110 of the CAA. Therefore, it is not appropriate for EPA to approve this provision into the SIP. It is important to emphasize that even if IDEQ determines to exempt a source from new source review under the authority of section 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.

### 3. Tier II Permits To Operate

The Idaho SIP currently includes a permit to operate program in Section 01.01012 PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT AND OPERATING

PERMITS (12/31/91) which has been approved by EPA as a federally-enforceable State operating permit (FESOP) program. This permit to operate program is applicable to all stationary sources and facilities. In May 1, 1994, Idaho revised its permit to operate program to implement the title V operating permits program. In this revision, Idaho adopted two separate operating permit programs: Idaho's title V program (called "Tier I" operating permits) and a program which contained much of the previous permits to operate program (called "Tier II" operating permits). This Tier II operating permits program differs from the previous program in a number of ways. Idaho revised the applicability of the program so that some provisions do not apply to Tier I sources, made the Tier II operating permit program separate from the previously consolidated permit to construct and operating permit format, and added a requirement for Tier II permit application fees.

The Tier II operating permit program applies to sources in four circumstances. Each of these circumstances, and EPA's proposed action on them, is discussed in detail below.

Section 401.01 provides a mechanism for sources not subject to Title V operating permits to apply for an enforceable operating permit in order to:

- (1) Authorize the use of an alternative emission limit (bubble) pursuant to section 440;
- (2) authorize the use of an emission offset pursuant to sections 204 or 206;
- (3) authorize the use of a potential to emit limitation, an emission reduction, or a netting transaction to exempt a facility or modification from permit to construct requirements;
- (4) authorize the use of a potential to emit limitation to exempt a facility from Title V; or
- (5) bank an emission reduction credit pursuant to section 461.

All of these are the types of actions EPA envisioned when setting forth the requirements for a SIP-approved federally-enforceable operating permit program (FESOP) (*See* 54 FR 27281, June 28, 1989) and SIP-approved generic bubble rules (*See* 51 FR 43814, December 4, 1986).<sup>1</sup> However, as noted

<sup>1</sup>Note that sections 204, 206, 440, 460, 461, and the definition of "net emission increase" authorize the Department to create new requirements directly in the Title V (Tier I) operating permit for subject sources. After EPA approval of sections 204, 206, 460, 461 and the definition of "net emission increase" into the Idaho SIP, terms and conditions in Title V (Tier I) operating permits that are created under the authority of these sections will be

below, EPA is proposing to take no action on section 440, Idaho's bubble rule. Therefore, EPA is proposing to approve section 401.01 with the exception of subsection 401.01.a, a provision which implements Idaho's bubble rule.

Section 401.02 only applies to non-Title V sources that have already received permits to construct under the SIP-approved rules. However, the Tier II rules do not include any provisions indicating what is to be included in the Tier II operating permit for such sources. EPA notes that Section 209.04 Revision of Permits to Construct states that permits to construct can only be revised using the procedures in section 209 and that a revised permit to construct must continue to comply with the requirements of sections 200 to 223. In addition, under the Clean Air Act and EPA regulations, a permit to construct is a permanent element of the SIP and cannot be superseded by an operating permit. Therefore, EPA is proposing to approve this section based on the understanding that it would be used only to establish requirements in addition to those contained in existing permits to construct and that section 404.04 (Permit Revision or Permit Renewal) cannot be used to revise terms and conditions of permits to construct. Such revisions would be done under the authority of section 209.04. This could be done through a single permit that is issued under the authority of section 400 as well as under the authority of sections 200 to 223.

Section 401.03.a. authorizes the Department to issue a Tier II operating permit to any source when emission reductions are necessary to attain or maintain any ambient air quality standard or applicable PSD increment. Although a Tier II operating permit is an appropriate State mechanism for creating new enforceable requirements, it does not alleviate the need for a source-specific SIP revision in certain situations. The Act and EPA regulations specifically require the SIP to be revised whenever a violation of the NAAQS or PSD increment is found (*See* section 110(a)(2)(H) of the Act and 40 CFR 51.166(a)(3) of EPA's regulations). Therefore, EPA is proposing to approve this section with the understanding that the emission limits and other conditions contained in Tier II operating permits

federally-enforceable. Since EPA is not proposing to approve section 440 into the SIP, terms and conditions created under the authority of that section will need to be identified in the Title V (Tier I) operating permit as state-enforceable only until such time as those terms and conditions are submitted to, and approved by, EPA as a source-specific revision to the Idaho SIP.

issued under this section will continue to be submitted to EPA for approval when they are submitted as parts of a control strategy for a nonattainment or maintenance area or in response to a finding of violation of a NAAQS or PSD increments.

Section 401.03.b. authorizes the Department to impose specific emission standards, or requirements on operation or maintenance, on any source as necessary to ensure compliance with any applicable emission standard or rule. EPA understands that this section will be used to impose requirements in addition to those already applicable to the source and not to change any applicable requirement. The Idaho rules include section 406. OBLIGATION TO COMPLY, which states that "Receiving a Tier II operating permit shall not relieve any owner or operator of the responsibility to comply with all applicable local, state and Federal rules and regulations." This is consistent with EPA's requirements for approvable FESOP programs which state that a program must "requires(s) that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise federally enforceable" (54 FR 27282). Based on this understanding, EPA is proposing to approve this section of the Tier II operating permit rule.

Section 401.04 authorizes the Department to issue a Tier II operating permit to any source that includes a future compliance date (*e.g.*, a compliance extension) for any provision of the Idaho rules. The section, however, conditions the issuance of such permit upon the approval of the EPA. EPA regulations specifically require that compliance date extensions be submitted to and approved by EPA as revisions to the SIP (*See* 40 CFR part 51 subpart N—Compliance Schedules and 40 CFR 51.104(b)). Since section 401.04 specifically requires the approval of EPA, and EPA's regulations require such approval to be accomplished through a SIP revision, EPA is proposing to take no action on this section. Tier II operating permits containing compliance schedules will become federally-enforceable upon EPA approval of each individual permit as a revision to the Idaho SIP.

The Tier II operating permit rules also include a section on permit applications (Section 402. APPLICATION

PROCEDURES), a requirement that the Department not issue a permit unless the source would comply with all applicable local, State or Federal emission standards, and not cause or significantly contribute to a NAAQS violation (Section 403. PERMIT REQUIREMENTS FOR TIER II SOURCES), procedures for issuing, revising and renewing permits, including the opportunity for public comment (Section 404. PROCEDURES FOR ISSUING PERMITS), requirements for permit content (Section 405. CONDITIONS FOR TIER II OPERATING PERMITS), and a provision which states that receiving a Tier II operating permit shall not relieve any source or operator of the responsibility to comply with all applicable local, state and Federal rules and regulations (Section 406. OBLIGATION TO COMPLY).

EPA has evaluated the Idaho Tier II operating permit program and has determined that, with the exceptions noted above, it continues to comply with EPA's requirements for federally-enforceable State operating permit programs as set forth in the June 28, 1989 **Federal Register** (54 FR 27281). EPA is, therefore, proposing to approve the Tier II operating permit program (including Section 007 DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 225 AND 400 THROUGH 461; Sections 400 through 406. PROCEDURES AND REQUIREMENTS FOR TIER II OPERATING PERMIT (except that EPA is taking no action on subsection 401.01.a. and section 401.04); and Section 470. PERMIT APPLICATION FEES FOR TIER II PERMITS) into the Idaho SIP as a federally-enforceable State operating permit program. The effect of this approval will be that emission limitations and other provisions contained in Optional Tier II operating permits (except for Tier II operating permits that authorize the use of alternative emission limits (bubbles) under subsection 401.01.a or that authorize future compliance dates under section 401.04) shall be applicable requirements of the Federally-approved Idaho SIP (in addition to any other provisions) for the purposes of section 113 of the CAA and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP. Alternative emission limits and future compliance dates in Tier II operating permits will not change the otherwise applicable requirements of the Idaho SIP until such time as they are submitted to, and approved by, EPA as source-specific SIP revisions.

#### 4. Miscellaneous Changes

There are numerous amendments to the existing rules, including renumbering and reordering the rules, and technical changes for clarification and improving the enforceability of existing emission limits. These are mainly administrative in nature to conform the existing sections to current State statutes and to other provisions of IDAPA 58. EPA finds these changes to be consistent with EPA's requirements and proposes to approve the rules as amended.

EPA is also proposing to approve the rescission of several rules, specifically Section 01.01001 POLICY; Section 01.01052.03 CRITERIA FOR DEFINING EPISODE STAGES; Section 01.01503 DESIGN STANDARDS (for incinerators); Sections 01.01551 to 01.01553 RULES FOR CONTROL OF MOTOR VEHICLES; Section 01.01996 ADMINISTRATIVE PROVISIONS; Section 01.01998 INCLUSIVE GENDER AND NUMBER; and Section 01.01999 SEVERABILITY. EPA has reviewed these changes and finds them to be unnecessary for purposes of the SIP and therefore approvable.

#### C. Provisions Related to Emissions Trading

EPA is proposing to take no action on certain provisions relating to the trading of emissions, specifically Section 440. REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES) and Section 441. DEMONSTRATION OF AMBIENT EQUIVALENCE. The Idaho "bubble" rules provide authority to IDEQ to approve source-specific alternative emission limits when certain conditions are met (e.g., no plant-wide increase in emissions and a demonstration of ambient equivalence). However, the Idaho rules do not require DEQ to ensure that all of the requirements of section 110 of the CAA are met (e.g., visibility impairment in Class I areas) when it approves a bubble. Nor do the Idaho rules comply with the guidelines set forth in EPA's Final Emissions Trading Policy Statement (51 FR 43814, December 4, 1986) for "generic" bubble rules (e.g., the rules do not limit generic trades to just VOC or de minimis amounts, nor do they include replicable procedures for demonstrating ambient equivalence).

SIP rules and standards are relied on to attain and maintain the NAAQS. Section 110(i) of the CAA specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section

110 of the CAA and the implementing regulations at 40 CFR part 51. See CAA section 110(l); 40 CFR 51.104. As discussed above, Idaho's "bubble" rules do not meet all of the requirements of section 110 of the CAA. Therefore, it is not appropriate for EPA to approve sections 440 and 441 into the Idaho SIP. Moreover, there is no requirement for the SIP to include bubble rules—they are an optional element of a State program and EPA has indicated that it will approve them into the SIP only if they meet the requirements of the Final Emissions Trading Policy Statement.

It is important to emphasize that even if DEQ approves an alternative emission limit for a State air regulation, which regulation has been approved as part of the Idaho SIP, EPA is not precluded from enforcing the federally-approved SIP limit against the source. The approval of an alternative emission limit to a SIP requirement by DEQ does not change the federally-enforceable SIP requirement for that source unless and until the alternative emission limit has been approved by EPA as a source-specific SIP revision.

#### D. Sulfur Dioxide Control Strategy for the Eastern Idaho Intrastate Air Quality Control Region

Idaho has made numerous changes to Sections 845 through 848 RULES FOR CONTROL OF SULFUR OXIDE FROM SULFURIC ACID PLANTS. Although the numerical limits have not been changed, the rules have been revised to improve their clarity and enforceability. Specifically, where needed, source test methods and averaging periods have been specified.

EPA is proposing to approve these revisions. This proposed approval, however, does not affect or change 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)), nor does it affect or change the source-specific Federal regulations at 40 CFR 52.675(b) that EPA promulgated in response to that disapproval.

#### E. Provisions Unrelated to the SIP

EPA is proposing to take no action on certain provisions that are not related to the criteria pollutants regulated under title I of the CAA or to the requirements for SIPs under section 110 of the Act. Specifically, EPA is proposing to take no action on the provisions related to Idaho's title V operating permit program (Section 008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 387; Sections 300 through

387. PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS; Sections 525 through 538. REGISTRATION AND REGISTRATION FEES; those provisions related to EPA regulations adopted by the State (Section 107. INCORPORATION BY REFERENCE, paragraphs 03.v. through 03.aa.), and those provisions which regulate pollutants other than criteria pollutants (Section 577.07 FLOURIDES; Section 586. TOXIC AIR POLLUTANT CARCINOGENIC INCREMENTS; Sections 750 and 751. RULES FOR CONTROL OF FLUORIDE EMISSIONS; Sections 775 and 776. RULES FOR CONTROL OF ODORS; Section 818. RECOVERY FURNACE STANDARDS; Section 819. RECOVERY FURNACE TRS STANDARDS; Section 820. DIGESTER AND EVAPORATOR STANDARDS; Section 824.01. Continuous Monitoring Requirements; Sections 835 through 839. RULES FOR CONTROL OF RENDERING PLANTS).

#### F. TSP and PM-10 Area Designations

In this rulemaking, EPA is also proposing to delete the total suspended particulates (TSP) area designations for Idaho in 40 CFR 81.313 and to adjust the PM-10 area designations in 40 CFR 81.313 to preserve the particulate matter minor source baseline dates as required by EPA's regulations (see 58 FR 31635, June 3, 1993) and section 579.01.d of the Idaho rules. In the June 3, 1993 **Federal Register**, EPA indicated that it would leave the current TSP designations in place until such time as each SIP replaced the TSP increments with PM-10 increments and ensured that any minor source baseline dates for TSP would be preserved for PM-10 areas. The Idaho rules now include PM-10 increments and provisions ensuring that any minor source baseline dates for particulate matter remain in effect.

#### G. Scope of Proposed Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within "Indian Country" as defined in 18 U.S.C. 1151.<sup>2</sup> Therefore,

<sup>2</sup> "Indian country" is defined under 18 U.S.C. 1151 as: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho,

EPA proposes that this SIP approval not extend to "Indian Country" in Idaho. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. See 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

#### III. Summary of Action

EPA is soliciting public comment on its proposed approval of revisions to the State of Idaho Implementation Plan. Specifically, EPA is proposing to approve all of the amendments to the Rules for the Control of Air Pollution in Idaho as submitted by the Director of the IDEQ on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1999, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, except that EPA is proposing to take no action on section 008; subsections 107.03.v. through aa; section 222.03; sections 300 through 387; sections 440 and 441; sections 525 through 538; section 577.07; 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>3</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).

EPA is also proposing to delete the total suspended particulates (TSP) area designations for Idaho in 40 CFR 81.313 and to adjust the PM-10 area designations in 40 CFR 81.313.

Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

<sup>3</sup> Sections 009, 010, 140 through 149, 161, 203.03, 210, 220.05, 221.04.a.i, 222.04.b, 225, 585, 586, 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, which was submitted to EPA on December 5, 2000, was returned to the State as incomplete, so it is not before EPA to act on at this time.

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted to the address listed in the front of this document. Written comments received by September 12, 2002 will be considered in the final rulemaking action taken by EPA.

#### IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 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 proposes to approve 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 proposed 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 proposed 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.*).

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

**List of Subjects**

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, 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, Wilderness areas.

Dated: August 2, 2002.

**L. John Iani,**

*Regional Administrator, Region 10.*

[FR Doc. 02-20449 Filed 8-12-02; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 63, 262 and 403**

[FRL-7255-8]

**RIN 2090-AA13**

**National Environmental Performance Track Program**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Available only to members in EPA’s National Environmental Performance Track program, this action proposes: a provision that would allow hazardous waste generators who are

members in Performance Track up to 180 days to accumulate their hazardous waste without a RCRA permit or interim status; simplifications to reporting requirements for facilities governed by Maximum Available Control Technology (MACT) provisions of the Clean Air Act (CAA); and specific reporting modifications for Publicly Owned Treatment Works (POTWs) regulated by the Clean Water Act (CWA). Additionally, this action solicits comments on a potential pilot of consolidated reporting that would allow Performance Track facilities to submit a single report that would contain data routinely required under the CAA, the CWA, the Emergency Planning and Community Right-to-know Act (EPCRA), and the Resource Conservation and Recovery Act (RCRA). These provisions are intended to serve as incentives for facility membership in the National Environmental Performance Track, and as demonstrations of the concept for reporting streamlining.

**DATES:** Submit comments on or before November 12, 2002. A public hearing on this proposed rule will be held on September 27, 2002. Submit requests to present oral testimony on or before September 25, 2002.

**ADDRESSES:** *Comments.* Submit comments (in duplicate if possible) to: Docket No. A-2000-47, U.S. Environmental Protection Agency, Mailcode 6102, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Public Hearing will be located at 1200 Pennsylvania Avenue, Washington, DC 20460.

*Electronic Access and Filing.*

Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.*

Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A-2000-47. No confidential business information (CBI) should be submitted by e-mail.

Electronic comments may be filed online at many Federal Depository Libraries.

Documents related to this rulemaking may be viewed at: U.S. EPA Air Docket, Room M-1500, 401 M Street, SW, Washington, DC 20460 (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. Submit electronic comments and other data to *a-and-r-docket@epa.gov.* See

**SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

**FOR FURTHER INFORMATION CONTACT:**  
*Technical information:* Robert D. Sachs, 202-260-2765, *sachs.robert@epa.gov.*  
*Public Hearing information:* Robert D. Sachs, 202-260-2765, *sachs.robert@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In addition to being available in the docket, an electronic copy of today’s proposed rule will be available on the World Wide Web through the Technology Transfer Network (TTN). Following the Administrator’s signature, a copy of the rule will be posted on the TTN’s policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

*Docket.* The docket is an organized and complete file of all the information considered by us in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. The regulatory text and other materials related to this rulemaking are available for review in the Air Docket under Docket Number A-2000-47 (see **ADDRESSES** above) or copies may be mailed on request by calling the Air Docket at (202) 260-7548 or by facsimile at (202) 260-4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

*Regulated Entities.* Categories and entities potentially regulated by this action include those listed in the following table.

Category	Examples of NAICS
Utilities .....	221
Textile mills .....	313
Wood product manufacturing ...	321
Chemical manufacturing .....	325
Plastics and rubber products manufacturing .....	326
Primary metal manufacturing ...	331
Fabricated metal products .....	332
Machinery manufacturing .....	333
Computer and electronic product manufacturing .....	334