

encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at <http://www.epa.gov/rmepub/index.jsp>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** Michael Leslie, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680. [leslie.michael@epa.gov](mailto:leslie.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:**

I. General Information

- A. Does this action apply to me?
- B. What should I consider as I prepare my comments for EPA?

II. What Action is EPA Taking Today?

- III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

**I. General Information**

*A. Does This Action Apply to me?*

This action primarily applies to the transportation sector represented by Metropolitan Council, the Minnesota Department of Transportation and persons needing to travel in the Minneapolis-St. Paul metropolitan area.

*B. What Should I Consider as I Prepare my Comments for EPA?*

1. *Submitting CBI.* Do not submit Confidential Business Information (CBI) to EPA through Regional Material in EDocket (RME), [regulations.gov](http://regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for

inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

**II. What Action is EPA Taking Today?**

EPA is proposing to approve the Minnesota SIP revision submitted on November 10, 2004. This submittal revises Minnesota's 1996 and 2009 CO emission inventories and 2009 MVEB using MOBILE6 for the Minneapolis-St. Paul CO maintenance area.

**III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?**

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at Regional Material in EDocket (RME) or in hard copy at the above address. (Please telephone Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.)

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

Environmental protection, Air pollution control, Carbon monoxide.

Dated: November 30, 2004.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 04-27027 Filed 12-8-04; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 272**

[FRL-7846-6]

**Idaho: Incorporation by Reference of Approved State Hazardous Waste Management Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Resource Conservation and Recovery Act, as amended (RCRA), allows EPA to authorize State hazardous waste management programs if EPA finds that such programs are equivalent and consistent with the Federal program and provide adequate enforcement of compliance. Title 40 of the Code of Federal Regulations (CFR) Part 272 is used by EPA to codify its decision to authorize individual State programs and incorporates by reference those provisions of the State statutes and regulations that are subject to EPA's inspection and enforcement authorities as authorized provisions of the State's program. This rule proposes to revise the codification of the Idaho authorized program.

**DATES:** Comments on this proposed action must be received by the close of business January 10, 2005. If EPA receives significant comments on this proposed action, EPA will respond to such comments in the **Federal Register** at the time EPA publishes a final rule.

**ADDRESSES:** Send written comments by mail to Jeff Hunt, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop AWT-122, Seattle, WA 98101, or via e-mail to [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov). You can inspect the records related to this codification effort from 8:30 a.m. to 4 p.m. Monday through Friday in the EPA Region 10 Library, 1200 Sixth Avenue, Mail stop WCM-122, Seattle, WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop WCM-122, Seattle, WA 98101, e-mail: [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov), phone number (206) 553-0256.

**SUPPLEMENTARY INFORMATION:**

**I. Incorporation by Reference**

*A. What Is Codification?*

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations

authorized by EPA supplant the federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program which is Federally enforceable in accordance with Sections 3007, 3008, 3013 and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

Today's action proposes to codify EPA's authorization of revisions to Idaho's hazardous waste management program. This proposed codification reflects the State program in effect at the time EPA authorized revisions to the Idaho hazardous waste management program in a final rule dated March 10, 2004 (69 FR 11322). Notice and an opportunity for comment regarding the revisions to the authorized State program were provided to the public at the time those revisions were proposed. EPA is not reopening its decisions to authorize changes to the State's program nor is EPA requesting comment on those revisions.

#### *B. What Is the History of the Authorization and Codification of Idaho's Hazardous Waste Management Program?*

Idaho initially received final authorization for its hazardous waste management program, effective April 9, 1990 (55 FR 11015). Subsequently, EPA authorized revisions to the State's program effective June 5, 1992 (57 FR 11580), August 10, 1992 (57 FR 24757), June 11, 1995 (60 FR 18549), January 19, 1999 (63 FR 56086), July 1, 2002 (67 FR 44069), and March 10, 2004 (69 FR 11322). EPA first codified Idaho's authorized hazardous waste program effective February 4, 1991 (55 FR 50327), and updated the codification of Idaho's program on June 5, 1992 (57 FR 11580), August 10, 1992 (57 FR 24757), and August 24, 1999 (64 FR 34133). In this action, EPA is proposing to revise Subpart N of 40 CFR part 272, to include the recent authorization revision actions effective July 1, 2002 (67 FR 44069) and March 10, 2004 (69 FR 11322).

#### *C. What Decisions Have We Proposed in This Action?*

Today's action proposes to codify EPA's authorization of revisions to Idaho's hazardous waste management program. The proposed codification will incorporate by reference the most recent version of the State's authorized hazardous waste management regulations. This proposed action does not reopen any decision EPA previously made concerning the authorization of the State's hazardous waste management program. EPA is not requesting comments on its decisions published in the **Federal Register** notices referenced in section B of this document concerning revisions to the authorized program in Idaho.

EPA is proposing to incorporate by reference the authorized revisions to the Idaho hazardous waste program by revising subpart N of 40 CFR part 272. 40 CFR part 272, subpart N, § 272.651 currently incorporates by reference Idaho's authorized hazardous waste program, as amended, through 1999. Section 272.651 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, § 272.651 references the Memorandum of Agreement, the Attorney General's Statement and the Program Description which were evaluated as part of the approval process of the hazardous waste management program in accordance with Subtitle C of RCRA.

#### *D. What Is the Effect of Idaho's Codification on Enforcement?*

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and any other applicable statutory and regulatory provisions, to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogues to these provisions. Therefore, the EPA is not proposing to incorporate by reference Idaho's inspection and enforcement authorities nor are those authorities part of Idaho's approved State program which operates in lieu of the Federal program. 40 CFR 272.651(b)(2) lists these authorities for informational purposes, and also because EPA considered them in determining the adequacy of Idaho's enforcement authorities. This action proposes to

revise this listing for informational purposes where these authorities have changed under Idaho's revisions to State law and were considered by EPA in determining the adequacy of Idaho's enforcement authorities. Idaho's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

#### *E. What State Provisions Are Not Proposed as Part of the Codification?*

The public is reminded that some provisions of Idaho's hazardous waste management program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which Idaho is not authorized, but which have been incorporated into the State regulations because of the way the State adopted federal regulations by reference;

(3) State procedural and enforcement authorities which are necessary to establish the ability of the program enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are "broader in scope" than the federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.651(b)(3) currently lists the Idaho regulatory provisions which are "broader in scope" than the federal program and which are not part of the authorized program being incorporated by reference. This action proposes to update that list for "broader in scope" provisions EPA identified in recent authorization actions for revisions to the State program. While "broader in scope" provisions are not part of the authorized program and cannot be enforced by EPA, the State may enforce such provisions under State law.

Idaho has adopted but is not authorized for certain sections of the Post Closure rule (Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process; Final Rule) promulgated by EPA on October 22, 1998 (63 FR 56710). These unauthorized sections of the Post Closure rule include the State analogs to Federal citations 40 CFR 270.1(c)(7), 40 CFR 265.121, 40 CFR 265.110(c), and 40 CFR 265.118(c)(4). Additionally, Idaho is authorized for State analogs to Federal 40 CFR 264.90(e), 264.90(f), 264.110(c), 264.112(b)(8),

264.112(c)(2)(iv), 264.118(b)(4), 264.118(d)(2)(iv), 264.140(d), 265.90(f), 265.110(d), 265.112(b)(8), 265.118(c)(5), 265.140(d), 270.1(c) introductory text, and 270.28 except where those sections reference the use of enforceable documents in the context of the Post Closure rule. Idaho did not seek, nor receive, authorization for language in those sections which state as follows: “\* \* \* or in an enforceable document (as defined in 270.1(c)(7).” Therefore, these Federal amendments included in Idaho’s adoption by reference at IDAPA 58.01.05.000, *et seq.*, but which are not part of the State’s authorized program will not be included in this proposed codification.

#### F. What Will Be the Effect of the Proposed Codification on Federal HSWA Requirements?

With respect to any requirement(s) pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The proposed Codification does not effect Federal HSWA requirements for which the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

## II. Statutory and Executive Order Reviews

This action proposes to codify EPA-authorized hazardous waste management requirements pursuant to RCRA Section 3006 and imposes no requirements other than those imposed by State law (see Supplementary Information). Therefore, this proposed action complies with applicable

executive orders and statutory provisions as follows:

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993).

2. *Paperwork Reduction Act*—This proposed action does not impose an information collection burden under the Paperwork Reduction Act.

3. *Regulatory Flexibility Act*—This action proposes to codify Idaho’s authorized hazardous waste management regulations in the CFR and does not impose new burdens on small entities. After considering the economic impacts of today’s proposed rule on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. *Unfunded Mandates Reform Act*—Because this action proposes to codify pre-existing requirements under State law which EPA already approved under 40 CFR part 271 and does not impose any additional enforceable duty beyond that required by State law or existing Federal 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 (Pub. L. 104–4).

5. *Executive Order 13132: Federalism*—Executive Order 13132 does not apply to this proposed action because it will not have federalism implications (*i.e.* 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). This action proposes to codify existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA.

6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 does not apply to this proposed action because this action does not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes).

7. *Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*—This proposed action is not subject to Executive Order 13045

because it is not economically significant and it does not make decisions based on environmental health or safety risks.

8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This proposed action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

9. *National Technology Transfer and Advancement Act (NTTAA)*—EPA previously addressed the non-applicability of the NTTAA in its final approvals to revisions of the State’s authorized hazardous waste management program. See section B of this proposed rule for the citations to the **Federal Register** for EPA’s approval of revisions to the State’s authorized hazardous waste management program. Section 12(d) of the NTTAA does not apply to this action.

10. *Executive Order 12988*—EPA has taken the necessary steps in this proposed action to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

### List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This proposed action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 22, 2004.

**Ronald A. Kreizenbeck,**  
Acting Regional Administrator, Region 10.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 272 as follows:

### PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

**Authority:** Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart N is amended by revising § 272.651 to read as follows:

**§ 272.651 Idaho State-administered program: Final authorization.**

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Idaho has final authorization for the following elements as submitted to EPA in Idaho's base program application for final authorization which was approved by EPA effective on April 9, 1990. Subsequent program revision applications were approved effective on June 5, 1992, August 10, 1992, June 11, 1995, January 19, 1999, July 1, 2002, and March 10, 2004.

(b) The State of Idaho has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations.* (1) The Idaho statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA Approved Idaho Statutory Requirements Applicable to the Hazardous Waste Management Program, March 2004.

(ii) The EPA Approved Idaho Regulatory Requirements Applicable to the Hazardous Waste Management Program, March 2004.

(2) EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39-4404; 39-4405 (except 39-4405(8)); 39-4406; 39-4407; 39-4408(4); 39-4409(2) (except first sentence); 39-4409(3); 39-4409(4) (first sentence); 39-4410; 39-4411(1); 39-4411(3); 39-4411(6); 39-4412 through 39-4416; 39-4418; 39-4419; 39-4421; 39-4422; and 39-4423(3)(a) and (b).

(ii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39-5804; 39-5809; 39-5810; 39-5813(2); 39-5814; 39-5816; 39-5817; and 39-5818(1).

(iii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Volume 2, Title 9, Chapter 3, "Public Writings", published in 1990 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9-337(10); 9-337(11); 9-338; 9-339; and 9-344(2).

(iv) 2002 Cumulative Pocket Supplement to the Idaho Code (I.C.), Volume 2, Title 9, Chapter 3, "Public Writing", published in 2002 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9-340A, 9-340B, and 9-343.

(v) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2002: sections 58.01.05.000; 58.01.05.356.02 through 58.01.05.356.05; 58.01.05.800; 58.01.05.850; 58.01.05.996; 58.01.05.997; and 58.01.05.999.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference, and are not federally enforceable:

(i) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39-4403(6) and (14); 39-4427; 39-4428 and 39-4429.

(ii) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Siting Act", published in 2002 by the Michie Company, Law Publishers: section 39-5813(3).

(iii) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2002: sections 58.01.05.355; and 58.01.05.500.

(4) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 10 and the State of Idaho (IDEQ), signed by the EPA Regional Administrator on August 1, 2001, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of Legal Authority.* The "Attorney General's Statement for Final Authorization," signed by the Attorney General of Idaho on July 5, 1988 and revisions, supplements and addenda to that Statement, dated July 3, 1989, February 13, 1992, December 29, 1994, September 16, 1996, October 3, 1997,

April 6, 2001, and September 11, 2002, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program Description.* The Program Description, and any other materials submitted as part of the original application or as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Idaho" to read as follows:

**Appendix A to Part 272—State Requirements**

\* \* \* \* \*

**Idaho**

(a) The statutory provisions include: Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", 2002: sections 39-4402; 39-4403 (except 39-4403(6) and (14)); 39-4408(1)-(3); 39-4409(1) (except fourth and fifth sentences); 39-4409(2) (first sentence); 39-4409(4) (except first sentence); 39-4409(5); 39-4409(6); 39-4409(7); 39-4409(8); 39-4411(2); 39-4411(4); 39-4411(5); 39-4423 (except 39-4423(3)(a) and (b)); and 39-4424.

Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39-5802; 39-5803; 39-5808; 39-5811; 39-5813(1); and 39-5818(2).

Copies of the Idaho statutes that are incorporated by reference are available from Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, VA 22906-7587.

(b) The regulatory provisions include: Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published on July 2002: sections 58.01.05.001; 58.01.05.002; 58.01.05.003; 58.01.05.004; 58.01.05.005; 58.01.05.006; 58.01.05.007; 58.01.05.008; 58.01.05.009; 58.01.05.010; 58.01.05.011; 58.01.05.012; 58.01.05.013; 58.01.05.014; 58.01.05.015; 58.01.05.016; 58.01.05.356.01; and 58.01.05.998, except where any of those sections reference the use of enforceable documents in the context of the Post Closure rule. Idaho did not seek, nor receive, authorization for language in those sections which states as follows: "\* \* \* or in an enforceable document (as defined in 270.1(c)(7))." Therefore, these Federal amendments included in Idaho's adoption by reference at IDAPA 58.01.05.000, *et seq.*, are not part of the State's authorized program. Nor does Idaho's authorized program include the Federal regulations at 40 CFR 270.1(c)(7), 40 CFR 265.121, 40 CFR 265.110(c) or 40 CFR

265.119(c)(4) because Idaho did not seek authorization for those sections.

\* \* \* \* \*

[FR Doc. 04-27028 Filed 12-8-04; 8:45 am]

BILLING CODE 6560-50-P

## NATIONAL SCIENCE FOUNDATION

### 45 CFR Part 650

RIN 3145-AA44

#### Minor Amendments To Rule on Inventions and Patents Resulting From Grants, Cooperative Agreements, and Contracts

**AGENCY:** National Science Foundation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action would amend the NSF Patents regulation to require grantees to use an electronic reporting and management system for inventions made with NSF assistance.

**DATES:** Comments must reach the NSF Patent Assistant on or before February 7, 2005.

**ADDRESSES:** All comments should be addressed to: NSF Patent Assistant at [patents@nsf.gov](mailto:patents@nsf.gov) or at Office of the General Counsel, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230.

**FOR FURTHER INFORMATION CONTACT:** Robin Clay Fritsch, NSF Patent Assistant, at [patents@nsf.gov](mailto:patents@nsf.gov) or on (703) 292-8060 (voice) or (703) 292-9041 (facsimile).

**SUPPLEMENTARY INFORMATION:** This amendment would revise the current NSF patent regulation published as part 650 of title 45 of the Code of Federal Regulations to require NSF awardees to use the Edison Invention Information Management System maintained by the National Institutes of Health to handle NSF-assisted inventions. This is consistent with the Foundation's requirement that all proposals seeking NSF financial assistance and all reports on NSF-assisted projects be submitted electronically.

Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Identify all comments sent electronically with subject line: Comments to Proposed Rulemaking.

#### Determinations

##### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of

potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), I have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. I certify under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would possibly affect the following entities, some of which may be small entities: NSF grantees, including those funded under our Small Business Innovation Research and Small Business Technology Transfer Programs, and recipients of subcontracts under NSF grants.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

##### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Robin Clay Fritsch, NSF Patent Assistant, on (703) 292-8060 (voice), (703) 292-9041 (facsimile), or [patents@nsf.gov](mailto:patents@nsf.gov).

##### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

##### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or

impose a substantial direct cost of compliance on them. I have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

##### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. This proposed rule would not result in such an expenditure.

##### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

##### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

##### Protection of Children

I have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

##### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

##### Energy Effects

I have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, and determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action"