

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
Interstate Transport State Implementation Plan, May 11, 2010 (see comments).	State-wide .....	06/28/2010	11/26/2010 [Insert page number where the document begins]	For the 1997 8-hour ozone NAAQS and the 1997 PM <sub>2.5</sub> NAAQS. See docket EPA-R10-OAR-2010-0669.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R10-OAR-2008-0482; FRL-9231-1]

**Approval and Promulgation of Implementation Plans; Idaho**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving numerous revisions to the Idaho State Implementation Plan that were submitted to EPA by the State of Idaho on May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008, and June 8, 2009. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act or CAA). EPA is taking no action in this rulemaking on a number of submitted rule revisions that are unrelated to the purposes of the implementation plan.

**DATES:** This action is effective on December 27, 2010.

**ADDRESSES:** Copies of the State's SIP revision and other information supporting this action are available for inspection at EPA Region 10, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen, EPA Region 10, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Seattle, Washington 98101, or at (206) 553-6706.

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

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**I. Background for This Action**

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit State Implementation Plans (SIPs) to attain and/or maintain the National Ambient Air Quality Standards (NAAQS) and EPA's actions regarding approval of those SIPs. On May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008, and June 8, 2009, the Idaho Department of Environmental Quality (IDEQ) submitted numerous revisions to the SIP for the State of Idaho. On March 18, 2010, EPA solicited public comment on a proposal to approve all of the revisions submitted by IDEQ, except the identified provisions on which EPA proposed to take no action. 75 FR 13058. This final action will update the

federally approved SIP to reflect changes to the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) that were made by IDEQ and reviewed and deemed approvable into the Idaho SIP (Code of Federal Regulations part 52, subpart N).

*A. What revisions to the Idaho SIP does this action address?*

Table 1 below identifies each SIP submittal addressed in this action, including the submittal date, title and sections of IDAPA 58.01.01 that are revised. The submittals include Idaho's annual incorporation by reference of various portions of the Code of Federal Regulations (CFR), revised new source review (NSR) requirements, revised permit to construct exemptions, updates and clarifications to the State's permitting program, revisions related to the definition of "regulated air pollutant," modified definitions for the State's major and minor source permitting programs, procedures for transferring permits, clarifications to sulfur content of fuels provisions, and various editorial changes. The submittals also included provisions we are taking no action on, including an electric generating unit construction prohibition, demonstration of preconstruction compliance with toxic standards, permit fee provisions, appeal provisions, provisions relating to Tier 1 operating permits, facility emissions cap, standards of performance of certain types of waste incinerators, and various definition revisions. More information about each SIP submittal, including a summary of the submittal and relevant background information and analysis supporting our action, can be found in our proposed approval. 75 FR 13058 (March 18, 2010).

TABLE 1—IDEQ SIP SUBMITTALS ADDRESSED IN THIS ACTION

Date of submittal	Title (with IDEQ Docket No.)	Sections of IDAPA 58.01.01 revised or amended
05/22/2003 <sup>1</sup> .....	Soil Vapor Extraction (58-0101-0102) ..... 2001 IBR of Federal Regulations (58-0101-0103) ..... Hospital/Medical/Infectious Waste Incinerators (58-0101-0103).	58.01.01.210. 58.01.01.008 and 107. 58.01.01.861.

TABLE 1—IDEQ SIP SUBMITTALS ADDRESSED IN THIS ACTION—Continued

Date of submittal	Title (with IDEQ Docket No.)	Sections of IDAPA 58.01.01 revised or amended
	Permit Clarification (58–0101–0202) .....	58.01.01.209, 213, 228, 313, 317, 395, 410, 511, 581, 700 and 710–724.
	2002 IBR of Federal Regulations (58–0101–0202) .....	58.01.01.008 and 107.
	Permitting Fees (58–0101–0104) .....	58.01.01.006, 007, 200–202, 209, 224–228, 400–402, 404, 407–410, 470, 800–802.
04/02/2004 .....	Title V Operating Permit Fees (58–0101–0203) .....	58.01.01.387–399.
	2003 IBR of Federal Regulations (58–0101–0301) .....	58.01.01.008 and 107.
07/13/2005 .....	New Source Review (58–0101–0304) .....	58.01.01.006, 200, 202, 204, 205, 206, 209, 225 and 401.
	Permit To Construct Exemptions (58–0101–0401) .....	58.01.01.220 and 222.
05/05/2006 <sup>2</sup> .....	2004 IBR of Federal Regulations (58–0101–0402) .....	58.01.01.008, 107, 200, 204 and 205.
	Regulated Air Pollutants (58–0101–0503) .....	58.01.01.006–008, 133–135, 155, 213, 220, 440–442, 460, 511–513, 560–561, 575, 581, and 679.
	2005 IBR of Federal Regulations (58–0101–0505) .....	58.01.01.008, 107, 200, 204 and 205.
	Procedure for Transfer of Permit To Construct and Tier II permits (58–0101–0506).	58.01.01.006, 007, 209, and 404.
	Permit To Construct Exemptions (58–0101–0507) .....	58.01.01.222.
04/16/2007 .....	2006 IBR of Federal Regulations (58–0101–0602) .....	58.01.01.008, 107, 200, 204, 205.
	Mercury (58–0101–0603) .....	58.01.01.199.
05/12/2008 .....	2007 IBR of Federal Regulations (58–0101–0701) .....	58.01.01.008, 107, 200, 204, 205.
06/08/2009 <sup>1</sup> .....	Sulfur Content of Fuels (58–0101–0703) .....	58.01.01.725.
	2008 IBR of Federal Rules (58–0101–0802) .....	58.01.01.008 and 107.

<sup>1</sup> The May 22, 2003 and June 8, 2009 SIP submittals included IDEQ SIP revisions for the control of nonmetallic mineral processing plants (IDEQ Docket 58–0101–0002 and a portion of Docket 58–0101–0802), which will be acted on in a separate action.

<sup>2</sup> The May 6, 2006 submittal included IDEQ’s SIP revision for the facility emissions cap (IDEQ Docket 58–0101–0508) which will be acted on in a separate action.

*B. What comments did we receive on our proposal for these revisions?*

National Resource Defense Council (NRDC) commented on EPA’s proposal to approve changes to Idaho’s permitting programs for major stationary sources, specifically the prevention of significant deterioration (PSD) permit program and the nonattainment area (Part D) permit program that incorporate EPA’s “2002 NSR Reform Rules.” NRDC primarily commented on the requirements of the Federal NSR rules, not Idaho’s application of the Federal requirements in its own rules. Notably, NRDC participated in litigation challenging EPA’s promulgation of the 2002 NSR Reform Rules, where similar arguments were made by NRDC and dismissed by the DC Circuit Court. *New York v. EPA*, 413 F.3d 3 (DC Cir. 2005). NRDC’s comments in this action, including exhibits, do not raise any specific concerns with Idaho’s rules, but rather, reiterate arguments made by NRDC to the DC Circuit regarding Sections 110(l) and 193 of the Clean Air Act.<sup>1</sup>

<sup>1</sup> NRDC notes that, “[t]he 2002 rule provisions considered by the DC Circuit in *New York v. EPA* were EPA regulations, not state ones. The court thus had no occasion to decide whether EPA could approve any state’s versions of any of the 2002 rule provisions consistently with section 110(l) of the Act.” NRDC Comments at 4. The Idaho rules at issue here track the federally approved rules, as upheld by the DC Circuit (which NRDC admits—NRDC Comments at 4–5) and NRDC supported all its comments with information related to the challenge of EPA’s 2002 NSR Reform Rules. NRDC

Although NRDC’s comments provide citations to nine sections of the Idaho rules, the comments make no attempt to specifically explain or demonstrate how those identified provisions are inconsistent with either Section 110(l) or Section 193 of the CAA. Furthermore, NRDC provides no evidence supporting its allegations that approval of the specific provisions would result in a violation of the CAA or otherwise be “arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.” NRDC Comments at 2. The NRDC comments include a list of 31 exhibits which the comment letter incorporates by reference into the comments. NRDC Comments at 1 and 11–12. The 31 exhibits appear to all be related to the DC Circuit Court case *New York v. EPA*, and were either submitted to that Court for review, or are relevant to that adjudication. In any event, none of the 31 exhibits provides EPA with any comments specific to the Idaho rules at issue. Despite the lack of Idaho-specific discussion in NRDC’s letter, EPA has responded to the few comments that appear related to the March 18, 2010, proposal to approve Idaho’s SIP revisions pertaining to EPA’s 2002 NSR Reform Rules.

1. Section 110(l)

a. Summary of comments regarding Section 110(l):

provided no Idaho-specific support for its comments.

NRDC asserts that “[t]he 2002 NSR Reform Rule provisions that were not vacated by the DC Circuit in *New York v. EPA* [citation omitted] allow previously-prohibited emissions-increases to occur.” NRDC Comments at 4. As a result, NRDC states that, “it cannot be said of Idaho’s plan that it ‘will cause no degradation of air quality’” and “Idaho has made no ‘demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements.’” NRDC Comments at 5. Further, NRDC states that “EPA has never made, or even proposed to make, a finding that revisions to Idaho’s permit provisions so that they track the non-vacated provisions of the 2002 rule ‘will cause no degradation of air quality’ [citations omitted] or avoid ‘interfering with any applicable requirements concerning attainment and reasonable further progress toward attainment of the [NAAQS], or any other applicable requirement of the Act,” and that “EPA fails to even cite CAA Section 110(l) in the proposal.” NRDC Comments at 5. Finally, NRDC concludes that “finalizing the EPA rulemaking proposal at issue here would violate section 110(l) of the Act.” NRDC Comments at 5.

b. EPA response to Section 110(l)-related comments:

EPA’s 2002 NSR Reform Rules were upheld by the DC Circuit Court which

reviewed them, with the exception of the pollution control project and clean unit provisions (and the remanded matters). The three significant changes in the 2002 NSR Reform Rules that were upheld by the DC Circuit were (1) plantwide applicability limits (PALs), (2) the 2-in-10 baseline, and (3) the actual-to-projected actual emission test. The Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis) discussed each of these three changes individually, and addresses some of the issues raised by NRDC.

With regard to PALs, the Supplemental Analysis explains, "The EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits." Supplemental Analysis at 6. EPA further explained that,

Although it is impossible to predict how many and which sources will take PALs, and what actual reductions those sources will achieve for what pollutants, we believe that, on a nationwide basis, PALs are certain to lead to tens of thousands of tons of reductions of VOC from source categories where frequent operational changes are made, where these changes are time-sensitive, and where there are opportunities for economical air pollution control measures. These reductions occur because of the incentives that the PAL creates to control existing and new units in order to provide room under the cap to make necessary operational changes over the life of the PAL.

Supplemental Analysis at 7. The Supplemental Analysis, and particularly Appendix B, provides additional details regarding EPA's analysis of PALs and anticipated associated emissions decreases.

With regard to the 2-in-10 baseline, EPA concluded that, "The EPA believes that the environmental impact from the change in baseline EPA is now finalizing will not result in any significant change in benefits derived from the NSR program." Supplemental Analysis at 13. This is mainly because "the number of sources receiving different baselines likely represents a very small fraction of the overall NSR permit universe, excludes new sources and coal fired power plants, and because the baseline may shift in either direction, we conclude that any overall consequences would be negligible." Supplemental Analysis at 14.

Additional information regarding the 2-in-10 baseline changes is available in the Supplemental Analysis, Appendix F.

With regard to the actual-to-projected actual test, EPA concluded, "we believe that the environmental impacts of the switch to the actual-to-projected actual test are likely to be environmentally beneficial. However, as with the change to the baseline, we believe the vast majority of sources, including new sources, new units, electric utility steam generating units, and units that actually increase emissions as a result of a change, will be unaffected by this change. Thus, the overall impacts of the NSR changes are likely to be environmentally beneficial, but only to a small extent." Supplemental Analysis at 14 (*see also* Supplemental Analysis Appendix G).<sup>2</sup>

Section 110(l) of the CAA states that "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress \* \* \* or any other applicable requirement of this chapter." Clean Air Act, 42 U.S.C. 7410(l). In "Approval and Promulgation of Implementation Plans; New Source Review; State of Nevada, Clark County Department of Air Quality and Environmental Management," 69 FR 54006 (September 7, 2004), the EPA stated that Section 110(l) does not preclude SIP relaxations. The Agency stated that Section 110(l) only requires that the "relaxations not interfere with specified requirements of the Act including requirements for attainment and reasonable further progress," and that, therefore, a state can relax its SIP provisions if it is able to show that it can "attain or maintain the [National Ambient Air Quality Standards (NAAQS)] and meet any applicable reasonable further progress goals or other specific requirements." 69 FR at 54011-12.

As the commenter acknowledges, the Idaho PSD/NSR rules track the Federal 2002 NSR Reform Rules. EPA did evaluate Idaho's rules consistent with its evaluation of the Federal rules, and determined that Idaho's rules were equivalent to the 2002 NSR Reform Rules. Overall, as summarized above, EPA expects that changes in air quality as a result of implementing Idaho's PSD/NSR rules will be consistent with EPA's position on the Federal 2002 NSR Reform Rules—that there will be somewhere between neutral and providing modest contribution to reasonable further progress when the 2002 NSR Reform Rules are compared to

<sup>2</sup> For more information on the 2002 NSR Reform Rules, and its supporting technical documents, *see* <http://www.epa.gov/nsr/actions.html#2002> (last visited November 21, 2008).

the pre-reform provisions. EPA's analysis for the environmental impacts of these three components of the 2002 NSR Reform Rules is informative of how Idaho's adoption of NSR Reform (based on the Federal rules) will affect emissions. EPA has no reason to believe that the environmental impacts will be different from those discussed in the Supplemental Analysis for the 2002 NSR Reform Rules, and, thus, approval of Idaho's SIP revision would not be contrary to Section 110(l) of the CAA.

As discussed above, NRDC cites to nine general sections of Idaho's rules as provisions that would violate Section 110(l).<sup>3</sup> Without further specificity, however, it is not clear why or how NRDC believes approval of these provisions would violate Section 110(l). Moreover, NRDC has provided no Idaho-specific documentation that indicates that EPA's analysis and conclusions regarding the impact of the 2002 NSR Reform Rules, in the Supplemental Analysis, are not applicable to Idaho's rules which mirror the Federal rules.

EPA evaluated Idaho's rules in comparison with the existing Federal rules, and determined that Idaho's rules were equivalent to the 2002 NSR Reform (Federal) Rules. EPA also considered the Supplemental Analysis in reviewing NRDC's comments. EPA concluded that approval of Idaho's SIP revision would not be contrary to Section 110(l) of the CAA because they implement Federal provisions. This comparison was discussed in the proposal to approve Idaho's SIP revision. Absent more explicit information demonstrating that Idaho's plan for implementation of a specific provision of its rules would interfere with any applicable requirement of the Clean Air Act and thus should be disapproved under Section 110(l), Idaho's SIP submission and the Supplemental Analysis support approval and there is no basis to determine that approval of Idaho's rules would violate Section 110(l).

Although NRDC has not identified the specific provisions within these sections in Idaho's submittal that they contend prevent the State's revised plan from meeting the criteria in Section 110(l), EPA presumes that NRDC is referring to

<sup>3</sup> While NRDC has not identified the specific provisions within these sections in Idaho's submittal that they contend prevent the State's revised plan from meeting the criteria in Section 110(l), by its many references to EPA's 2002 NSR Reform Rules, EPA presumes that NRDC is referring to the changes to the applicability provisions for determining when modifications to existing major stationary sources are subject to review (*i.e.*, when a major modification would occur). The responses to NRDC's comments that follow are based on that presumption.

the changes to the applicability provisions for determining when modifications to existing major stationary sources are subject to review (i.e., when a major modification would occur) because those provisions of the 2002 NSR Reform Rules differ most from PSD and Part D NSR rules currently approved in the Idaho SIP. With respect to major modifications, IDEQ has informed EPA that it issued only one PSD permit for a major modification in the ten years prior to adopting the 2002 NSR Reform Rules and has not issued a PSD permit for a major modification in the five years since adopting the NSR Reform changes. Given this permitting record, EPA does not believe that there is any evidence that the change to the major modification applicability provisions in the Idaho SIP resulting from Idaho's adoption of the 2002 NSR Reform Rules would interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement of the CAA.

In addition, EPA does not believe that the change to the definition of major modification has interfered, or will interfere, with Idaho's ability to ensure reasonable further progress in any nonattainment area. Of the five areas in Idaho that were designated nonattainment in response to the 1990 Clean Air Act Amendments, all five have now attained the applicable NAAQS. Three have been formally redesignated to attainment, two before and one after Idaho revised its NSR rules (Boise-Ada County CO, 67 FR 65713 (October 28, 2002; eff. December 27, 2002); Ada County (Boise) PM<sub>10</sub>, 68 FR 61106 (October 27, 2003, eff. November 26, 2003); and Portneuf Valley (Pocatello) PM<sub>10</sub>, 71 FR 39574 (July 13, 2006, eff. August 14, 2006)). Two have been determined to have attained the applicable NAAQS, one before and one after Idaho revised its NSR rules (Pinehurst (Shoshone County) PM<sub>10</sub>, 66 FR 44304 (August 23, 2001, eff. October 22, 2001) and Sandpoint PM<sub>10</sub>, 75 FR 35302 (June 22, 2010, eff. August 23, 2010)). Since all nonattainment areas have successfully attained the NAAQS, some before and some after the revision to the NSR rules, EPA finds no basis to conclude that the change to the rules would interfere with Idaho's ability to ensure reasonable further progress in any nonattainment area. There are no existing major sources of PM<sub>2.5</sub> or PM<sub>2.5</sub> precursors in the newly designated Franklin County (Cache Valley) PM<sub>2.5</sub> nonattainment area, so the change to the Part D NSR rule will not affect Idaho's ability to

ensure reasonable further progress when it develops and submits the attainment plan for that newly designated area.

Moreover, although NRDC acknowledges that "110(l) requires \* \* \* a determination that the specific revision, when considered in the context of the SIP elements already in place, can meet the Act's attainment requirements," (citing *Hall v. EPA*, 273 F.3d 1146, 1152, 1159 (9th Cir. 2001) (emphasis added), NRDC's comments fail to consider the other permitting rules in the Idaho SIP along with the revisions to those rules that EPA is proposing to approve in this action. The Idaho SIP includes a single "permit to construct" program (IDAPA 58.01.01.200 through 228) that includes requirements for the construction and modification of stationary sources, including major stationary sources in nonattainment areas (IDAPA 58.01.01.204) and attainment or unclassifiable areas (IDAPA 58.01.01.205). Importantly, the Idaho rules require that changes to existing major stationary sources that are not subject to review under the provisions for major sources are subject to the nonmajor source requirements of IDAPA 58.01.01.200 through 228 (see IDAPA 58.01.01.204.03 and 58.01.01.205.04). The nonmajor source requirements include the requirement that no permit to construct shall be granted unless the applicant shows that the stationary source or modification would not cause or significantly contribute to a violation of any ambient air quality standard (IDAPA 58.01.01.203.02). Thus, changes at existing major stationary sources that would have undergone review as major modifications under Idaho's existing PSD SIP but now may not be reviewed as major modifications under Idaho's adoption of the 2002 NSR Reform Rules must still undergo review as nonmajor changes and cannot be constructed if they would cause or significantly contribute to a violation of the NAAQS. Idaho's nonmajor new source review requirements provide additional assurance that Idaho's adoption of the 2002 NSR Reform rules will not interfere with the Idaho SIP's ability to attain and maintain the NAAQS, and the commenter has provided no information to the contrary.

## 2. Section 193

### a. Summary of comments regarding Section 193:

NRDC states that NSR is a "control requirement" and thus the requirements of Section 193 apply to the NSR rules at issue in the Idaho SIP revision. NRDC Comments at 8. NRDC further alleges that Idaho's revisions "ensure that

emissions will not be reduced as much as under the preexisting rules. In fact, the modifications allow emissions to increase in Idaho's nonattainment areas." NRDC Comments at 9. Finally, NRDC states that "because section 193 lies within part D," "if EPA approves Idaho's revised plan, that action will additionally exceed the agency's authority under section 110(k)(3) and violate section 100(l) [this appears to be a typo and should read 110(l)]." NRDC Comments at 10.

### b. EPA response to Section 193-related Comments:

The response to the Section 193 issues raised by NRDC involves many of the same elements of the response above to the Section 110(l) comments, which is also incorporated by reference here.

Section 193 states (in relevant part) that "[n]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

Assuming for purposes of this discussion that Section 193 does apply to the instant action, as was discussed earlier in this notice, EPA has previously determined and explained in the Supplemental Analysis that implementation of the 2002 NSR Reform Rules still in effect (that is, those not vacated by the D.C. Circuit in its New York I decision) are expected to have at least a neutral environmental benefit. Therefore, even if Section 193 did apply to this action, EPA does not agree with commenter's assertions that the SIP submissions approved in this action raise a Section 193 concern.

In addition, the core of NRDC's argument seems to revolve around the DC Circuit Court decision in *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006) (finding that NSR associated with the 1-hour ozone standard included control requirements). At issue in *South Coast* was EPA's determination regarding the revocation of the entire 1-hour ozone program (and corresponding SIP elements), including all the 1-hour nonattainment NSR elements, and whether such elements would continue to be required as part of SIPs implementing the new (at that time) 8-hour ozone standard. The facts in the *South Coast* case are thus distinguishable from the instant matter where the Idaho SIP is merely being updated to include changes to the 2002 Federal NSR Rules and, as discussed

above, those changes insure equivalent or greater emission reductions. EPA is not removing the entirety of its Part D NSR program from the Idaho SIP as it pertains to a particular NAAQS. Rather, EPA is simply approving Idaho's SIP revisions that implement rules equivalent to Federal rules; and as discussed earlier in this notice, EPA developed a Supplemental Analysis to support adoption of the Federal rules. The Idaho SIP will continue to operate

with the full suite of NSR related elements.<sup>4</sup>

**II. Final Action**

EPA is taking final action to approve all of the amendments to the Rules for the Control of Air Pollution in Idaho as submitted by the Director of IDEQ on May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008, and June 8, 2009, except for certain sections listed below. This action will result in changes to the Idaho SIP in 40 CFR part 52, subpart N.

*A. Rules To Approve into the Idaho SIP*

EPA approves into the SIP at 40 CFR part 52, subpart N, the Idaho regulations listed in Table 2. It is important to note that in those instances where IDEQ submitted multiple revisions to a single section of IDAPA 58.01.01, the most recent version of that section (based on state effective date) is incorporated into the SIP because it supersedes all previous revisions.

TABLE 2—IDAHO REGULATIONS FOR PROPOSED APPROVAL

State citation	Title/subject	State effective date	Explanation
<i>58.01.01—Rules for the Control of Air Pollution in Idaho</i>			
006	General Definitions	4/11/2006	Except Section 006.66(b) (re: state air toxics in definition of “modification”).
007	Definitions for the Purposes of Sections 200 through 225 and 400 through 461.	4/11/2006	
107	Incorporations by Reference	5/8/2009	Except Section 107.03(g) through (n) and (p).
133	Start-up, Shutdown and Scheduled Maintenance Requirements	4/11/2006	
134	Upset, Breakdown and Safety Requirements	4/11/2006	4/2/2008
135	Excess Emission Reports	4/11/2006	
155	Circumvention	4/11/2006	7/1/2002
200	Procedures and Requirements for Permits to Construct	4/2/2008	
201	Permit to Construct Required	7/1/2002	4/6/2005
202	Application Procedures	4/6/2005	
204	Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas.	4/2/2008	4/2/2008
205	Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas.	4/2/2008	
206	Optional Offsets for Permits to Construct	4/6/2005	4/11/2006
209	Procedures for Issuing Permits	4/11/2006	
213	Pre-Permit Construction	4/11/2006	4/11/2006
220	General Exemption Criteria for Permit to Construct Exemptions	4/11/2006	
222	Category II Exemptions	4/11/2006	7/1/2002
400	Procedures and Requirements for Tier II Operating Permits	7/1/2002	
401	Tier II Operating Permit	4/6/2005	Except 401.01.a (bubbles) and 401.04 (compliance date extension).
402	Application Procedures	7/1/2002	
404	Procedure for Issuing Permits	4/11/2006	4/11/2006
460	Requirements for Emission Reduction Credits	4/11/2006	
511	Applicability	4/11/2006	4/11/2006
512	Definitions	4/11/2006	
513	Requirements	4/11/2006	4/11/2006
560	Notification to Sources	4/11/2006	
561	General Rules	4/11/2006	4/11/2006
575	Air Quality Standards and Area Classification	4/11/2006	
581	Prevention of Significant Deterioration (PSD) Increments	4/11/2006	4/11/2006
679	Averaging Period	4/11/2006	
700	Particulate Matter Process Weight Limitations	5/3/2003	More recent state rule effective date.
725	Rules for Sulfur Content of Fuels	5/8/2009	

*B. Rules on Which No Action Is Taken*

EPA is taking no action on the following rules:

- 58.01.01.008, Definitions for Purposes of Section 300 through 386
- 58.01.01.199, Electric Generating Unit Construction Prohibition

- 58.01.01.210, Demonstration of Preconstruction Compliance with Toxic Standards

<sup>4</sup> EPA also notes that there are only three nonattainment areas in Idaho where the Part D NSR rules apply. There are no existing major stationary

sources within any of these nonattainment areas so the rule provisions that define when a modification

to an existing major source would be subject to review do not actually apply to any sources.

- 58.01.01.225, Permit to Construct Processing Fee
- 58.01.01.228, Appeals
- 58.01.01.313, 317, 387–399, 395, Procedures and Requirements for Tier I Operating Permits
- 58.01.01.410, Appeals
- 58.01.01.175–181, Procedures and Requirements for Permits Establishing a Facility Emissions Cap
- 58.01.01.861, Standards of Performance of Hospital/Medical/Infectious Waste Incinerators

### C. Scope of 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>5</sup> Therefore, 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).

### V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable

<sup>5</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, 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.

Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Dated: November 10, 2010.

**Dennis J. McLerran,**

*Regional Administrator Region 10.*

- 40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

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

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

### Subpart N—Idaho

- 2. In § 52.670(c), the table in paragraph (c) is amended:
  - a. By revising entries 006 and 007.
  - b. By revising entry 107.
  - c. By revising entry 200.
  - d. By revising entries 133 through 135.
  - e. By revising entry 155.
  - f. By revising entries 201 and 202.
  - g. By revising entries 204 through 206.
  - h. By revising entry 209.
  - i. By revising entry 213.
  - j. By revising entry 220.
  - k. By revising entry 222.
  - l. By revising entries 400 through 402.

- m. By revising entry 404.
- n. By revising entry 460.
- o. By revising entries 511 through 513.
- p. By revising entries 560 and 561.
- q. By revising entry 575.

- r. By revising entry 581.
- s. By revising entry 679.
- t. By revising entry 700.
- u. By revising entry 725.

**§ 52.670 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED IDAHO REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho</b>				
* * *	* * *	* * *	* * *	* * *
006 .....	General Definitions .....	4/11/06, 7/1/02, 4/5/00, 3/20/97, 5/1/94	11/26/2010 [Insert page number where the docu- ment begins]	Except Section 006.55(b) (re: state air toxics in definition of “modification”).
007 .....	Definitions for the Purposes of Sec- tions 200 through 225 and 400 through 461.	4/11/06, 4/5/00, 6/30/95, 5/1/95, 5/1/94	11/26/2010 [Insert page number where the docu- ment begins]	
* * *	* * *	* * *	* * *	* * *
107 .....	Incorporations by Reference .....	5/8/09, 3/30/07, 3/20/04, 7/1/97, 5/1/94	11/26/2010 [Insert page number where the docu- ment begins]	Except Section 107.03(g) through (n) and (p).
* * *	* * *	* * *	* * *	* * *
133 .....	Start-up, Shutdown and Scheduled Maintenance Requirements.	4/11/06, 4/5/00, 3/20/97 .....	11/26/2010 [Insert page number where the docu- ment begins]	
134 .....	Upset, Breakdown and Safety Require- ments.	4/11/06, 4/5/00, 3/20/97 .....	11/26/2010 [Insert page number where the docu- ment begins]	
135 .....	Excess Emission Reports .....	4/11/06, 4/5/00, 3/20/97 .....	11/26/2010 [Insert page number where the docu- ment begins]	
* * *	* * *	* * *	* * *	* * *
155 .....	Circumvention .....	4/11/06 .....	11/26/2010 [Insert page number where the docu- ment begins]	
* * *	* * *	* * *	* * *	* * *
200 .....	Procedures and Requirements for Per- mits to Construct.	4/2/2008 .....	11/26/2010 [Insert page number where the docu- ment begins]	
201 .....	Permit to Construct Required .....	7/1/02 .....	11/26/2010 [Insert page number where the docu- ment begins]	
202 .....	Application Procedures .....	4/6/05, 7/1/02, 4/5/00, 5/1/94	11/26/2010 [Insert page number where the docu- ment begins]	
* * *	* * *	* * *	* * *	* * *
204 .....	Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas.	4/2/08, 3/30/07, 4/6/05, 4/5/00, 5/1/94	11/26/2010 [Insert page number where the docu- ment begins]	
205 .....	Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas.	4/2/08, 3/30/07, 4/6/05 .....	11/26/2010 [Insert page number where the docu- ment begins]	
206 .....	Optional Offsets for Permits to Con- struct.	4/6/05 .....	11/26/2010 [Insert page number where the docu- ment begins]	

## EPA-APPROVED IDAHO REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
209	Procedures for Issuing Permits	4/11/06, 4/6/05, 5/3/03, 7/1/02, 4/5/00, 3/19/99, 3/23/98, 5/1/94	11/26/2010 [Insert page number where the document begins]	
213	Pre-Permit Construction	4/11/06, 5/3/03, 4/5/00, 3/23/98	11/26/2010 [Insert page number where the document begins]	
220	General Exemption Criteria for Permit to Construct Exemptions.	4/11/06, 4/5/00	11/26/2010 [Insert page number where the document begins]	
222	Category II Exemptions	4/11/06, 4/5/00, 5/1/94, 7/1/97	11/26/2010 [Insert page number where the document begins]	
400	Procedures and Requirements for Tier II Operating Permits.	7/1/02	11/26/2010 [Insert page number where the document begins]	
401	Tier II Operating Permit	4/6/05, 7/1/02, 4/5/00, 5/1/94	11/26/2010 [Insert page number where the document begins]	Except 401.01.a (bubbles) and 401.04 (compliance date extension).
402	Application Procedures	7/1/02, 5/1/94, 4/5/00, 7/1/02	11/26/2010 [Insert page number where the document begins]	
404	Procedure for Issuing Permits	4/11/06, 4/5/00, 5/1/94, 7/1/02	11/26/2010 [Insert page number where the document begins]	
460	Requirements for Emission Reduction Credits.	4/11/06, 4/5/00, 5/1/94	11/26/2010 [Insert page number where the document begins]	
511	Applicability	4/11/06	11/26/2010 [Insert page number where the document begins]	
512	Definitions	4/11/06, 5/1/94, 4/5/00	11/26/2010 [Insert page number where the document begins]	
513	Requirements	4/11/06	11/26/2010 [Insert page number where the document begins]	
560	Notification to Sources	4/11/06	11/26/2010 [Insert page number where the document begins]	



EPA-APPROVED IDAHO REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
561	General Rules	4/11/06, 5/1/94, 3/15/02	11/26/2010 [Insert page number where the document begins]	
575	Air Quality Standards and Area Classification.	4/11/06	11/26/2010 [Insert page number where the document begins]	
581	Prevention of Significant Deterioration (PSD) Increments.	4/11/06, 5/3/03, 7/1/97, 5/1/94.	11/26/2010 [Insert page number where the document begins]	
679	Averaging Period	4/11/06, 5/1/94	11/26/2010 [Insert page number where the document begins]	
700	Particulate Matter Process Weight Limitations.	5/3/03, 4/5/00	11/26/2010 [Insert page number where the document begins]	
725	Rules for Sulfur Content of Fuels	5/8/09, 5/1/94	11/26/2010 [Insert page number where the document begins]	

\* \* \* \* \*

[FR Doc. 2010-29628 Filed 11-24-10; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 372**

[EPA-HQ-TRI-2010-0006; FRL-9231-5]

RIN 2025-AA28

**Addition of National Toxicology Program Carcinogens; Community Right-to-Know Toxic Chemical Release Reporting**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is adding 16 chemicals to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act of 1990 (PPA). These 16 chemicals have been classified by the National Toxicology Program in their Report on Carcinogens as “reasonably anticipated

to be a human carcinogen.” EPA has determined that these 16 chemicals meet the EPCRA section 313(d)(2)(B) criteria because they can reasonably be anticipated to cause cancer in humans.

**DATES:** This final rule is effective November 30, 2010, and shall apply for the reporting year beginning January 1, 2011 (reports due July 1, 2012).

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-TRI-2010-0006. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number

for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-566-0743; fax number: 202-566-0677; e-mail: [bushman.daniel@epa.gov](mailto:bushman.daniel@epa.gov), for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424-9346 or (703) 412-9810 in Virginia and Alaska or toll free, TDD (800) 553-7672, <http://www.epa.gov/epaoswer/hotline/>.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this notice apply to me?*

You may be potentially affected by this action if you manufacture, process, or otherwise use any of the chemicals included in this final rule. Potentially affected categories and entities may include, but are not limited to: