

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

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

II. Response to Comments

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

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

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

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

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

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

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

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

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

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