

Simplot facility are sufficient to protect the SO₂ NAAQS, PSD increments, and visibility in the absence of the requirements Simplot requests be removed. Therefore, as noted in the proposal, EPA's action on this SIP does not modify EPA's previous disapproval of the Idaho SIP with respect to its adequacy to attain and maintain the NAAQS for sulfur dioxide in the Eastern Idaho Intrastate Air Quality Control Region. See 40 CFR 52.675(a)(1) and (2). Thus, the source-specific Federal regulations at 40 CFR 52.675(b) that EPA promulgated in response to that disapproval remain in place. See 67 FR 52672.

III. Final Action

EPA is taking final action to approve all of the amendments to the Rules for the Control of Air Pollution in Idaho as submitted by the Director of IDEQ on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, except that EPA is taking no action on section 008; subsections 107.03.h. through q⁵; section 222.03; sections 300 through 387; subsection 401.01.a. and section 401.04; sections 440 and 441; sections 525 through 538; section 577.06; section 586; sections 750 and 751; sections 775 and 776; section 818; section 819; section 820; section 824.01; and sections 835 through 839.⁶ EPA approved section 204 on April 17, 2001 (66 FR 19722) and sections 563 through 574 and section 582 on April 12, 2001 (66 FR 18873). The entire text of the EPA-approved Idaho rules may be viewed on line at <http://www.epa.gov/r10earth/sips.htm>.

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

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

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

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

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

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

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

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

IV. Regulatory Assessment Requirements

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

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

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

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