reservations, if the land is irrigable by the Coachella Valley County Water District and we determine that the owners are not benefitting from its use.

(b) You must file a lease of trust or restricted land on the Cabazon, Augustine, and Torres-Martinez Indian reservations with the appropriate county recorder. You must also file the lease with the Coachella Valley County Water District or other appropriate irrigation or water district.

**§ 162.52 Salt River and San Xavier Reservations.**

(a) A lease of trust or restricted land on the Salt River or San Xavier reservation may authorize more than one renewal period, but the maximum term allowable by law can not be exceeded. A lease for public, religious, educational, recreational, residential, or business purposes may run for a maximum term of 99 years, and a lease for farming purposes may run for up to 40 years where a substantial investment in the development of the land or the production of a specialized crop is required.

(b) If we determine that the governmental interests of a municipality contiguous to either the Salt River or San Xavier reservation would be substantially affected by the grant or approval of a lease, and these interests cannot be adequately assessed on the basis of the information available (under § 162.16), we must notify the municipality of the proposed action and give them 30 days to comment.

(c) The scenic, historic, and religious values of the Mission San Xavier del Bac on the San Xavier Reservation must be protected.

**§ 162.53 Tulalip Reservation.**

The Tulalip Tribes may grant a lease without our approval, if the term of the lease does not exceed 15 years including renewal or extension periods. The Tulalip Tribes may grant a lease without our approval for up to 30 years, including renewal or extension periods, under tribal law approved by us.

Date: May 31, 1996.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 96–14640 Filed 6–14–96; 8:45 am]

**BILLING CODE 4310–02–P**

## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Part 102

### Rules Governing Misconduct by Attorneys or Party Representatives Before the Agency

**AGENCY:** National Labor Relations Board.

**ACTION:** Notice of Extension of Time for filing comments to proposed rulemaking.

**SUMMARY:** Pursuant to a request from the Management Co-Chair of the American Bar Association Subcommittee on NLRB Practice and Procedure, the NLRB gives notice that it is extending by approximately 45 days the time for filing comments on the proposed rule changes governing misconduct by attorneys or party representatives before the Agency (61 FR 25158, May 20, 1996).

**DATES:** The comment period which currently ends on June 19, 1996, is extended to August 2, 1996.

**ADDRESSES:** Comments on the proposed rulemaking should be sent to: Office of the Executive Secretary, 1099 14th Street, NW., Rm. 11600, Washington, DC 20570.

**FOR FURTHER INFORMATION CONTACT:** John J. Toner, Executive Secretary, Telephone: (202) 273–1940.

Dated, Washington, DC, June 11, 1996.

By direction of the Board:

John J. Toner,

*Executive Secretary.*

[FR Doc. 96–15164 Filed 6–14–96; 8:45 am]

**BILLING CODE 7545–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

**[AD–FRL–5521–3 ]**

### Clean Air Act Proposed Interim Approval and in the Alternative Disapproval of Operating Permits Program, State of Idaho; Clean Air Act Proposed Delegation of National Emission Standards for Hazardous Air Pollutants as They Apply to Part 70 Sources and Approval of Streamlined Mechanism for Future Delegations, State of Idaho

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

**ACTION:** Proposed action.

**SUMMARY:** The EPA is reproposing action on two limited aspects of the Operating Permits Program submitted by the Idaho Division of Environmental Quality for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources and to certain other sources. The first element involves the changes EPA believes are necessary as a condition of full approval to the State's regulations dealing with general permits. The second element involves the effect of the State's environmental audit statute on the State's enforcement obligations under title V of the Clean Air Act.

In addition, if EPA grants interim approval of Idaho's title V operating permits program, EPA proposes to delegate the National Emission Standards for Hazardous Air Pollutants (NESHAP) as adopted by the State and as they apply to part 70 sources. EPA also proposes to approve a streamlined mechanism for future NESHAP delegations.

**DATES:** Comments must be submitted by July 17, 1996.

**ADDRESSES:** Comments must be submitted to Elizabeth Waddell, at EPA Region 10, 1200 Sixth Avenue, M/D–108, Seattle, WA 98101. Copies of the State's submittal and other supporting information used in developing this proposed action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Docket # 10V100, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Waddell, 1200 Sixth Avenue, M/D–108, Seattle, WA 98101, (206) 553–4303.

**SUPPLEMENTARY INFORMATION:**

I. Background and Purpose

*A. Introduction*

1. Title V

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a

period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

2. Section 112

Section 112(l) of the Act established new, more stringent requirements upon a State or local agency that wishes to implement and enforce an air toxics program pursuant to section 112 of the Act. Prior to November 15, 1990, delegation of NESHAP regulations to the State and local agencies could occur without formal rulemaking by EPA. However, the new section 112(l) of the Act requires EPA to approve State and local toxics rules and programs under section 112 through formal notice and comment rulemaking. State and local air agencies that wish to implement and enforce a Federally-approved air toxic program must make a showing to EPA that they have adequate authorities and resources. Approval is granted by EPA through the authority contained in section 112(l), and implemented through the Federal rule found in 40 CFR part 63, subpart E if the Agency finds that: (1) the State or local program or rule is ''no less stringent'' than the corresponding Federal rule or program, (2) adequate authority and resources exist to implement the State or local program or rule, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the State or local program or rule is otherwise in compliance with Federal guidance.

3. Prior Action on Idaho's Title V Submittal

On October 27, 1995, EPA proposed disapproval of Idaho's operating permits program because of deficiencies in the State's provisions for excess emissions and administrative amendments. In the alternative, EPA proposed interim approval of Idaho's program provided Idaho revised its regulations to address these deficiencies and submitted the revisions to EPA before final action on Idaho's submittal. *See* 60 FR 54990. EPA also proposed to grant interim approval under section 112(l)(5) of the Act and 40 CFR 63.91 of Idaho's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated, but only as they apply to part 70 sources, if EPA granted interim approval to Idaho's title V program. The EPA received a single letter of public comment on the proposal. The commenter disagreed with EPA's proposal to approve Idaho's program only for sources located outside the exterior boundaries of Indian Reservations and with EPA's failure to grant full approval to Idaho's insignificant activities list. In addition, Idaho has submitted program revisions addressing EPA's two proposed grounds for disapproving Idaho's program. Neither the comments submitted in response to the October 25, 1995, proposal nor the program revisions submitted by the State involve the two issues on which EPA is reproposing action in this notice. Accordingly, EPA will address the comment, any additional comments it receives in response to this reproposal and the effect of the State's program revisions when EPA takes final action after the close of the public comment period on this notice.

II. Discussion

*A. Reconsideration of General Permit Requirements*

In the October 27, 1995, Federal Register notice proposing action on Idaho's title V submission, EPA identified four deficiencies in Idaho's general permitting regulations which EPA believed must be addressed as a condition of full approval. *See* 60 FR 54990 (October 27, 1995). One such deficiency identified by EPA was that the Idaho Administrative Procedures Act (IDAPA) 16.01.01.335.05 states that issuance of authorization to operate under a general operating permit is a final agency action for purposes of administrative and judicial review of the authorization. EPA stated that this provision was in conflict with the requirements of 40 CFR 70.6(d)(2), which allows a permitting authority to grant a source's request for authorization to operate under a general permit without repeating the public participation procedures, but provides that such grant shall not be final agency action for purposes of judicial review. Upon further reflection, EPA believes that part 70 does not prevent a permitting authority from subjecting a decision to grant or deny a general permit to judicial review, but instead merely states that a permitting authority is not required to make such a decision subject to judicial review. In this respect, the Idaho program does not conflict with the requirements of part 70, but instead merely requires more public participation than required by part 70. Accordingly, EPA believes the Idaho program does not conflict with the requirements of part 70 by subjecting to administrative and judicial review the State's decision that a particular source meets or fails to meet the applicability requirements for a general permit. EPA therefore proposes that Idaho not be required to eliminate this provision as a condition of full approval.

*B. Idaho's Environmental Audit Statute*

The Clean Air Act sets forth the minimum elements required for approval of a State operating permits program, including the requirement that the permitting authority has adequate authority to assure that sources comply with all applicable CAA requirements as well as authority to enforce permits through recovery of minimum civil penalties and appropriate criminal penalties. Section 502(b)(5) (A) and (E) of the CAA. EPA's implementing regulations, which further specify the required minimum elements of State operating permits programs (40 CFR part 70), explicitly require States to have certain enforcement authorities, including authority to seek injunctive relief to enjoin a violation, to bring suit to restrain violations imposing an imminent and substantial endangerment to public health or welfare, and to recover appropriate criminal and civil penalties. 40 CFR 70.11. In addition, section 113(e) of the Clean Air Act sets forth penalty factors for EPA or a court to consider for assessing penalties for civil and criminal violations of title V permits. EPA is concerned about the potential impact of some State privilege and immunity laws on the ability of such States to enforce federal requirements, including those under title V of the Clean Air Act. Based on review and consideration of the statutory and regulatory provisions discussed above, EPA issued guidance on April 5, 1996, entitled, ''Effect of Audit Immunity/Privilege Laws on States' Ability to Enforce Title V Requirements'' to address these concerns. This guidance outlines certain elements of State audit immunity and privilege laws which, in EPA's view, may so hamper the State's ability to enforce as to preclude approval the State's title V operating permits program.

In the October 27, 1995, Federal Register notice proposing action on Idaho's title V submission, which was published prior to issuance of the April 5, 1996, guidance, EPA discussed the impact of Idaho's environmental audit statute, Idaho Code Title 9, Chapter 8, on the approvability of Idaho's title V operating permits program. EPA expressed concern with two aspects of Idaho's environmental audit statute. *See* 60 FR 55000. First, EPA was concerned with the provision prohibiting the State from compelling a source, with certain limited exceptions, to provide the State

a report that meets the definition of an ''environmental audit report'' (referred to here as the ''audit privilege''). *See* Idaho Code 9–804 to –807. Although EPA was concerned that the audit privilege could be used to shield bad actors and frustrate access to crucial factual information, however, EPA stated it did not believe that Idaho's audit privilege posed a bar to full title V approval. Second, EPA was concerned with the provision which grants a source immunity from civil or criminal liability for any violations voluntarily disclosed by the source to the State in an environmental audit report (referred to here as the ''audit immunity provision''). *See* Idaho Code 9–809. EPA stated that the audit immunity provision of the Idaho environmental audit statute appeared to impermissibly interfere with the requirement that States have authority to collect a penalty for each day of violation. Therefore, EPA proposed to require, as a condition of full approval, that Idaho eliminate the audit immunity provision of Idaho Code 9–809 or demonstrate to EPA's satisfaction that the provision does not impermissibly interfere with the enforcement requirements of title V.

Since publishing the October 27, 1995, proposal acting on Idaho's title V program, EPA has reviewed the audit immunity and audit privilege provisions of Idaho's audit immunity statute in light of the April 5, 1996, guidance. After further consideration of the enforcement requirements of title V and the Idaho environmental audit statute in light of this guidance, EPA believes that both the immunity and privilege provisions of the Idaho environmental audit statute deprive the State of Idaho of adequate authority to enforce the requirements of title V of the Clean Air Act. Accordingly, EPA proposes that Idaho be required to revise both the audit immunity and audit privilege provisions of its environmental audit statute or demonstrate to EPA's satisfaction that these provisions do not impermissibly impair the enforcement authorities required for full title V approval.

1. Audit Immunity Provision

EPA continues to believe that the Idaho immunity statute (Idaho Code 9–809) impermissibly interferes with the enforcement requirements of title V and part 70. In addition, EPA has identified additional ways in which the Idaho audit immunity provision appears problematic. The Idaho statute provides that any person who makes a voluntary disclosure of an environmental audit report identifying circumstances that may constitute a violation of State environmental laws to the appropriate agency shall be immune from civil or criminal penalties or incarceration for the underlying associated acts. Idaho Code 9–809(1). This provision does contain some restrictions. First, the immunity does not apply to the extent the disclosure is required by law or a specific permit condition or order because such a disclosure is not considered ''voluntary'' under the Idaho statute. Idaho Code 9–809(5). Because of the recordkeeping, reporting and compliance certification requirements of 40 CFR 70.6, which Idaho has adopted as part of its title V program (*see* IDAPA 16.01.01.322), the scope of the audit immunity should be greatly restricted with respect to title V sources in Idaho. Second, the immunity is not available if the person has committed ''serious violations that constitute a pattern of continuous or repeated violations of environmental laws, regulations, permit conditions, settlement agreements, consent orders, and were due to separate and distinct events giving rise to the violations within the three (3) year period prior to the date of the disclosure.'' Idaho Code 9–809(6). These restrictions do diminish the scope of the immunity to some extent. Nevertheless, the Idaho statute appears to bar prosecution of ''knowing'' violations of title V requirements unless the source has previously and repeatedly violated the same requirements within the past three years. EPA believes, such a restriction on criminal penalty authority deprives the State of authority to recover ''appropriate'' penalties for criminal conduct, as required by section 502(b)(5)(E) of the Act and 40 CFR 70.11(a)(3)(ii), 70.11(a)(3)(iii) and 70.11(c). Moreover, the Idaho statute would preclude the assessment of civil penalties for violations voluntarily disclosed in an environmental audit even if the violations resulted in serious harm or risk of harm to the public or the environment or resulted in substantial economic benefit to the violator. Section 113(e) of the Clean Air Act requires EPA or the court to consider these factors in assessing penalties. To the extent the Idaho statute prevents consideration of these factors, EPA believes that Idaho does not have adequate authority to assess appropriate penalties as required by section 502(b)(5)(E) of the Clean Air Act and 40 CFR 70.11(c).

In addition to the impermissible restrictions on criminal and civil penalties, EPA also believes that the Idaho immunity statute unduly interferes with the State's authority to issue emergency orders and seek injunctive relief. Title V requires a State to have clear authority to restrain or enjoin immediately activities that present an imminent and substantial endangerment to public health or welfare or the environment and to seek injunctive relief where necessary to stop a violation, correct noncompliance and prevent its recurrence. *See* section 502(b)(5)(E); 40 CFR 70.11(a) (1) and (2). The Idaho audit immunity provision could be interpreted to interfere with these requirements in two respects. First, Idaho Code 9–809(7) states that the audit immunity does not affect the authority of the State to require remedial action through a consent order or action in district court or to abate an imminent hazard ''[e]xcept as specifically provided,'' but the exception to the immunity provision also states that ''[a] person may, but is not required, to enter into a voluntary consent order with the environmental regulatory agency to achieve compliance.'' Idaho Code 9–809(5). This provision suggests that the State may be precluded from issuing a unilateral order or seeking a court order requiring a source to correct a violation on a specified schedule, at least where the violation does not involve an imminent hazard.

Second, Idaho Code 9–809(3) states that ''where audit evidence shows the noncompliance to be the failure to obtain a permit or other governmental permission, appropriate efforts to correct the noncompliance may be demonstrated by the submittal of a permit application or equivalent document within a reasonable time.'' A source must generally demonstrate that it has achieved compliance within a reasonable period in order to demonstrate that an audit was voluntary and thus a basis for seeking immunity. *See* Idaho Code 9–809(2)(c). It is unclear, however, whether Idaho Code 9–809(3) was intended to allow a source to continue the unlawful activity for which a permit was required (for example, construction of a new major source without a permit) without being subject to penalty or other enforcement action or whether it was merely intended to give the source immunity for its past activities of constructing without a permit. As noted above, EPA believes that the Idaho audit immunity provision does not comport with the title V requirements for penalty authority to the extent it grants immunity for criminal violations and for civil violations resulting in serious harm or risk of harm or a substantial economic benefit. If Idaho Code 9–809(3) would also prevent the State from issuing or seeking an order

enjoining the violation (for example, an order halting construction), EPA believes that the Idaho law would also impermissibly interfere with the enforcement requirements of title V and part 70. In short, EPA believes that the effect of Idaho's audit immunity provision on the requirements of 40 CFR 70.11(a) (1) and (2) for emergency orders and injunctive relief is unclear and must be clarified by the State as a condition of full approval.

2. Audit Privilege

The part 70 regulations governing program approval do not specifically address the scope of privileges available in State enforcement actions. Nonetheless, EPA believes that where a State adopts a very broad privilege law specifically directed at evidence related to environmental violations, that privilege could go so far as to render the overall State enforcement program inadequate even if other authorities are nominally available (such as injunctive relief and penalty authority). An excessively broad privilege could so interfere with the exercise of these nominal enforcement authorities as to render them meaningless by depriving the State of the ability to gather evidence needed to establish a violation.

The Idaho audit privilege (Idaho Code 9–804 to –807) broadly prohibits the State from requiring a source to disclose an ''environmental audit report,'' thus depriving the State of potentially important information for determining whether a source is in violation, whether a violation was knowing and whether the source took prompt action to correct the violation. The Idaho legislation does contain some restrictions on the scope of this privilege. Importantly, the law makes clear that ''[d]ocuments, data and other information which must be collected, developed and reported pursuant to federal and state law, rule and regulation must be disclosed in accordance with the applicable law, rule or regulation.'' Idaho Code 9–805; *See also* Idaho Code 9–807. Because of the recordkeeping, reporting and compliance certification requirements of 40 CFR 70.6, which Idaho has adopted as part of their title V program (see IDAPA 16.01.01.322), the scope of the audit privilege should be greatly restricted with respect to title V sources in Idaho. In addition, the audit privilege does not apply if an environmental agency or a court, after *in camera* review, determines that the environmental audit privilege is asserted for a fraudulent purpose or that the material sought to be withheld is not an appropriate subject for an environmental audit. Idaho Code 9–806(2). Nonetheless, where an audit produces evidence of noncompliance, the Idaho privilege would prevent the State from reviewing that evidence to determine whether the violation will be corrected and compliance assured. Similarly, where an audit reveals evidence of prior criminal conduct on the part of managers and employees, Idaho would be barred from obtaining and using such information. As a result, the State would be prevented from obtaining appropriate criminal penalties. In these respects, EPA believes that the Idaho audit privilege set forth in Idaho Code 9–804 to –807 is so broad so as to deprive the State of its ability to obtain appropriate criminal penalties and assure compliance, as required by section 502(b)(5)(E) of the Clean Air Act and 40 CFR 70.11.

*C. Proposed Action on Section 112(l) Submittal*

As stated above, the requirements for title V approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. On October 27, 1995, EPA proposed to grant interim approval under Section 112(l)(5) of the Act and 40 CFR 63.91 of the State of Idaho's program for receiving delegation of 112 standards that are unchanged from Federal standards as promulgated but only as they apply to Part 70 sources, if EPA granted interim approval to Idaho's operating permits program.

By letter dated December 14, 1995, Idaho also requested that EPA approve its use of the automatic delegation mechanism for delegation of future section 112 standards unchanged from the Federal standards as described in section 5.1.2.a of EPA's ''Interim Enabling Guidance for the Implementation of 40 CFR Part 63'', Subpart E, EPA–453/R–93–040, November 1993 (Subpart E Enabling Guidance). After reviewing Idaho's legal authorities, EPA has determined that Idaho does not meet the criteria set forth in the Subpart E Enabling Guidance to receive automatic delegation of future section 112 standards because it cannot immediately implement and enforce future section 112 standards without additional rulemaking at the State level.

Although Idaho has the authority to include Federal standards in part 70 permits without adopting such standards by reference, the section 112 requirements for some part 70 sources will take effect (or already have taken effect) prior to the issuance of their part 70 permits. To obtain approval of the delegation of section 112 standards, Idaho must be able to implement and enforce those standards upon approval and assure compliance by all sources within the State with each applicable regulation promulgated under section 112. EPA is therefore denying Idaho's request for automatic delegation as described by the State's December 14, 1995 letter.

However, in IDAPA 16.01.107, Idaho has adopted by reference all Federal standards contained in 40 CFR part 61 and part 63 as in effect on April 1, 1994. In addition, Idaho has the authority to implement and enforce those 112 standards that it has adopted by reference. Therefore, if EPA grants interim approval to Idaho's operating permits program, EPA proposes to interimly delegate the section 112 standards contained in 40 CFR parts 61 and 63 which were in effect on April 1, 1994, and as those rules apply to part 70 sources. Those standards consist of 40 CFR part 61, subparts A through F, H through R, V, W, Y, BB, and FF; and 40 CFR part 63, subparts A, D, L, and M. EPA would retain implementation and enforcement authority for these rules as they apply to non-part 70 sources. EPA recommends that by the time of final interim approval of this submittal, Idaho should adopt by reference 40 CFR part 61 and 63 at least as in effect June 1, 1996, and continue to update its incorporation by reference as the federal 112 standards are revised and new Federal standards are issued.

In addition, EPA proposes to approve the mechanism described in Section 5.1.2.b of the Subpart E Enabling Guidance for those Federal standards that Idaho adopts by reference unchanged, if EPA grants interim approval to Idaho's operating permits program. Using this streamlined approach, upon adoption of a NESHAP(s) by reference, Idaho will only need to send a letter of request to EPA. EPA would in turn respond to this request by sending a letter back to the State delegating the appropriate NESHAP(s) as requested. No further formal response from the State would be necessary at this point, and if a negative response from the State is not received within 10 days of this letter of delegation from EPA, the delegation would then become final.

Although EPA is proposing to delegate authority to Idaho to enforce the NESHAP regulations as they apply

to part 70 sources, it is important to note that EPA will retain oversight authority for all sources subject to these federal CAA requirements. EPA has the authority and responsibility to enforce the Federal regulations in those situations where the State is unable to do so or fails to do so.

## III. Proposed Action and Implications

EPA is reopening the public comment on two conditions EPA proposed in the October 27, 1995, Federal Register notice (60 FR 54990) as conditions that Idaho must meet to obtain full approval of its operating permits program. First, upon further reflection, EPA believes that IDAPA 16.01.01.335.05, which states that issuance of authorization to operate under a general operating permit is a final agency action for purposes of administrative and judicial review of the authorization, does not conflict with the requirements of 40 CFR 70.6(d)(2), but instead merely requires more public participation than required by part 70. If EPA takes final action on this proposal, condition ''n. General Permits'' of Section II.B.2 of the October 27, 1995 Federal Register notice (60 FR 54997) would be revised to read as follows:

n. General Permits

Idaho must revise its regulations authorizing general permits to be consistent with 40 CFR 70.6(d), including provisions requiring: (a) that if a permitting authority has issued a general permit, the authority must grant the conditions and terms of the general permit to sources that qualify; (b) specialized general permit applications meet the requirements of title V; and (c) that the State may take enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

Second, EPA believes that Idaho's environmental audit privilege, as well as Idaho's environmental audit immunity provision, interfere with the enforcement requirements of title V and part 70 and must be revised or otherwise shown to be consistent with title V and part 70 requirements. If EPA takes final action on this proposal, condition ''aa. Environmental Audit Statute'' of Section II.B.2 of the October 27, 1995 Federal Register notice (60 FR 54997) would be revised to read as follows:

aa. Environmental Audit Statute

Idaho must revise both the immunity and audit provisions of the Idaho environmental audit statute, Idaho Code title 9, chapter 8, to ensure that it does not interfere with the requirements of section 502(b)(E)(5) of the Clean Air Act and 40 CFR 70.11 for adequate authority to pursue appropriate criminal and civil penalties, issue emergency orders, obtain injunctive relief and otherwise assure compliance. In the alternative, Idaho must demonstrate to EPA's satisfaction that these required enforcement authorities are not impaired by Idaho's environmental audit statute.

Also, if EPA grants interim approval of Idaho's operating permits program, in addition to approving the program submitted by the State of Idaho for the purpose of implementing and enforcing the hazardous air pollutant requirements under section 112 of the Clean Air Act, EPA proposes to delegate all federal NESHAPs adopted by the State, as they apply to part 70 sources and to approve the streamlined mechanism for delegation described in Section 5.1.2.b of the Subpart E Enabling Guidance.

## IV. Administrative Requirements

### *A. Request for Public Comments*

EPA is requesting comments on the three issues addressed in this notice, namely, (1) conditioning full approval of the Idaho title V operating permits program on specified changes to Idaho's regulations addressing general permits (IDAPA 16.01.01.335); (2) conditioning full approval of the Idaho title V operating permits program on specified changes to Idaho's environmental audit statute (Idaho Code title 9, chapter 8) or a satisfactory explanation of why the statute does not interfere with title V enforcement requirements; and (3) EPA's proposal to delegate all federal NESHAPs adopted by the State, as they apply to part 70 sources and to approve the streamlined mechanism for delegation described in Section 5.1.2.b of the Subpart E Enabling Guidance. All other aspects of EPA's October 27, 1996 Federal Register notice (60 FR 54990), including all other conditions on interim and full approval of Idaho's operating permits program, remain unchanged by this reproposal and are no longer open for public comment. Copies of the State's submittal and other information relied upon for this proposed action and notice are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed action. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review.

The EPA will consider any comments received by July 17, 1996.

### *B. Executive Order 12866*

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

### *C. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. NESHAP rule or program delegations approved under the authority of section 112(l) of the Act also do not create any new requirements, but simply confer Federal authority for those requirements that the State of Idaho is already imposing. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

### *D. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements, Hazardous substances.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 6, 1996.

Phil Millam,

*Acting Regional Administrator.*

[FR Doc. 96–15281 Filed 6–14–96; 8:45 am]

**BILLING CODE 6560–50–P**

## 40 CFR Part 300

**[FRL–5520–3]**

## National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 20

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list.

This rule proposes to add 15 new sites to the NPL, 13 to the General Superfund Section and 2 to the Federal Facilities Section. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

**DATES:** Comments must be submitted on or before August 16, 1996.

**ADDRESSES:** Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters, U.S. EPA, CERCLA Docket Office, (Mail Code 5201G); 401 M Street, SW., Washington, DC 20460, 703/603–8917. Please note this is the mailing address only. If you wish to visit the HQ Docket to view documents, and for additional Docket addresses and further details on their contents, see Section I of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Terry Keidan, State and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

**SUPPLEMENTARY INFORMATION:**



### I. Introduction

*Background*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Pub. L. 99–499, stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action * * * and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases. 42 U.S.C. 9601(23). ''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C 9601(24).

Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is appendix B of 40 CFR part 300, is the National Priorities List (''NPL'').

CERCLA section 105(a)(8)(B) defines the NPL as a list of ''releases'' and as a list of the highest priority ''facilities.'' CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), quoted above and at 48 FR 40659 (September 8, 1983).

Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR