

comments on these proposed regulations.

*Dates, Times, and Locations of Public Meetings:* See **SUPPLEMENTARY INFORMATION** section for meeting dates, times, and locations.

**FOR FURTHER INFORMATION CONTACT:**

Zollie Stevenson, Jr., U.S. Department of Education, 400 Maryland Ave., SW., room 3W230, Washington, DC 20202-6132. *Phone:* at 202-260-1824. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** On April 23, 2008, the Secretary published an NPRM in the **Federal Register** (73 FR 22020) to amend certain of the Title I regulations. The purpose of these proposed regulations is to build on the advancements of State accountability and assessment systems over the six years since NCLB was signed into law, while incorporating key feedback from the field into an even clearer vision of what it takes to educate each and every one of our Nation's school children. The proposed regulations would clarify and strengthen current Title I regulations in the areas of assessment, accountability, supplemental educational services (SES), and public school choice. Issuing regulations that strengthen Title I implementation in these areas will help bring about higher-quality assessments and stronger accountability for results, as well as provide parents with the information they need to make informed decisions about public school choice and SES. A copy of the NPRM is available at <http://www.ed.gov/policy/elsec/reg/proposal/index.html>.

The Department is accepting public comments on the NPRM through June 23, 2008. Comments must be submitted in writing to the Department in accordance with the instructions in the NPRM. We look forward to receiving your comments on these proposed regulations to ensure that they accomplish our intended objectives.

**Public Meetings**

The Department will also be holding four public meetings to receive comments on the NPRM. The meetings will occur on the following dates at the times and locations indicated:

*Wednesday, May 14, 2008*

Hilton Boston Back Bay Hotel, 40 Dalton Street, Boston, MA 02115, *Time:* 9 a.m.–12 p.m. & 2 p.m.–5 p.m., *Meeting Room:* Fenway Room.

*Thursday, May 15, 2008*

Georgia Perimeter College, Dunwoody Campus, 2101 Womack Road, Dunwoody, GA 30338, *Time:* 9 a.m.–12

p.m. & 2 p.m.–5 p.m., *Meeting Room:* Auditorium, C1100, North Campus.

*Monday, May 19, 2008*

Sheraton Kansas City Sports Complex Hotel, 9103 East 39th Street, Kansas City, MO 64133, *Time:* 9 a.m.–12 p.m. & 2 p.m.–5 p.m., *Meeting Room:* Royal Ballroom.

*Thursday, May 22, 2008*

W Hotel, 1112 4th Avenue, Seattle, WA 98101, *Time:* 9 a.m.–12 p.m. & 2 p.m.–5 p.m., *Meeting Room:* Great Room 1.

Individuals who wish to present comments during a public meeting should register at [Special.Events@ed.gov](mailto:Special.Events@ed.gov) at least one week before the public meeting. Any meeting time that remains after the Web site registrations are processed will be made available on the day of the meeting. Individuals who have not registered on the Web site and who wish to present comments should do so at the on-site registration desk on the day of the meeting. We will process Web-site and on-site registrations on a first-come, first-served basis.

Each individual will be allowed three minutes to present comments. Individuals are requested to submit three written copies and an electronic file (CD or diskette) of their comments at the meeting, which should be labeled with their name and contact information. Transcripts of these meetings, along with any written comments received, will be made a part of the official rulemaking record.

The meeting site is accessible to individuals with disabilities. Individuals who need accommodations in order to attend the meeting (e.g., interpreting services, assistive listening devices, materials in alternative formats) should notify Frances Hopkins at [Special.Events@ed.gov](mailto:Special.Events@ed.gov) or call 202-205-6268 no later than 14 days prior to the meeting the individual will attend. We will attempt to meet requests for accommodations after this date, but cannot guarantee their availability.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at <http://www.gpoaccess.gov/nara/index.html>

Dated: April 24, 2008.

**Kerri L. Briggs,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. E8-9351 Filed 4-28-08; 8:45 am]

**BILLING CODE 4000-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R10-OAR-2008-0336; FRL-8559-3]

**Approval and Promulgation of State Implementation Plans: Idaho**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to Idaho's State Implementation Plan (SIP) relating to open burning and crop residue disposal requirements and visible emissions. The Director of the Idaho Department of Environmental Quality (IDEQ) submitted a draft SIP revision to the EPA on April 15, 2008. The EPA is proposing to approve this draft SIP revision at Idaho's request because, if adopted by the State in its current form, it would satisfy the requirements of the Clean Air Act (hereinafter the Act or CAA). The State has scheduled a public hearing on this draft revision for May 2, 2008.

The Director of the IDEQ also submitted a SIP revision relating to open burning and crop residue disposal requirements on May 22, 2003, which the EPA approved on July 11, 2005 (70 FR 39658). A State public hearing for this revision was held on September 11, 2002. In a ruling issued on January 30, 2007, and amended on May 29, 2007, that approval was remanded and vacated by the U.S. Court of Appeals for the 9th Circuit in *Safe Air for Everyone v. USEPA*, 475 F.3d 1096, amended 488 F.3d 1088 (9th Cir 2007) (SAFE decision). The EPA is re-proposing to approve the portion of the May 22, 2003, SIP revision that would not be changed by the draft SIP revision, if adopted, submitted on April 15, 2008. We are proposing to approve this portion of the SIP revision because it satisfies the requirements of the Act and does not contravene the Court's SAFE decision.

**DATES:** Written comments must be received on or before *May 29, 2008*.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2008-0336, by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *Mail:* Donna Deneen, EPA, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101

C. *Hand Delivery:* EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Donna Deneen, Office of Air Waste, and Toxics (AWT-107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R10-OAR-2008-0336. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some

information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen, (206) 553-6706, or by e-mail at [R10-Public\\_Comments@epa.gov](mailto:R10-Public_Comments@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

## Table of Contents

- I. Background
- II. Proposed Action
  - A. General Open Burning Rules at IDAPA 58.01.01.600 through 616
  - B. Crop Residue Disposal Rules at IDAPA 58.01.01.617 through 623, Provision Addressing Visible Emissions at IDAPA 58.01.01.625, and New Legislation
    - 1. Background
    - 2. Section 110(l) Requirements
    - 3. Section 193 Requirements
- III. Scope of Proposed Action
- IV. Statutory and Executive Order Reviews

## I. Background

The EPA is proposing to approve revisions to Idaho's SIP relating to open burning and crop residue disposal requirements and to a provision addressing visible emissions. This proposed approval encompasses a draft revision (IDAPA 58.01.01.600-603, 606, 617-623, and 625), submitted by the IDEQ on April 15, 2008 (the 2008 draft SIP revision request) and a portion of a revision request (IDAPA 58.01.01.604, 607-610, 612, 613, 615 and 616) submitted by the IDEQ on May 22, 2003. (We will refer to this portion of the May 22, 2003, SIP revision request as the "2003 SIP revision request.")

Idaho has requested that the EPA "parallel process" the 2008 draft SIP revision request. Parallel processing means that the EPA proposes rulemaking action on a state's rule revision before the state regulation is adopted in final form under state law. See 40 CFR part 51, appendix V, section 2.3. Parallel processing generally saves total processing time and allows the SIP revision, if approved, to become effective sooner than under the traditional federal review process. Under the traditional process the EPA

does not first propose to approve or disapprove a SIP revision request until it has been finally adopted under state law. Under parallel processing, the EPA may take final action to approve a SIP revision request if the final version of the adopted state submission remains substantially unchanged from the submission on which the proposed approval rulemaking was based. If there are significant changes in the State's final submission, the EPA would not take final action approving this proposal.

The EPA is not parallel processing the portion of the 2003 SIP revision request that would not be changed by the 2008 draft SIP revision request, if adopted. This portion of the 2003 SIP revision request has already been through the state public process and adopted in its final form under state law, and remains officially submitted to the EPA. We expect that Idaho will make no further changes to these already adopted and submitted provisions. Therefore it is not necessary to parallel process the request to approve these revisions. Rather, in today's notice the EPA proposes to approve these provisions as currently adopted under State law, based on our expectation that they will not be changed in the State's adoption of its 2008 SIP revision request.

## History of the 2003 and 2008 SIP Revision Requests

On May 22, 2003, Idaho submitted to the EPA a requested revision to its SIP relating to open burning and crop residue disposal requirements. This 2003 SIP revision request contained a number of changes including editorial changes, the addition of a provision regarding the immediate abatement of open burning in emergencies, removal of a provision regarding discretionary approval of alternatives to open burning, and the addition of a provision to specify that crop residue burning was an allowable form of open burning.

On July 11, 2005, the EPA approved Idaho's 2003 SIP revision request, explaining that we considered it to be a clarification of Idaho's prior SIP rather than a substantive amendment. 70 FR 39658 and 70 FR 41963 (2005 SIP approval). A citizen's group filed a petition for judicial review of our 2005 SIP approval in the U.S. Court of Appeals for the 9th Circuit, claiming that the approval relaxed the existing SIP and that we were incorrect in viewing the 2003 SIP revision request as a clarification of the prior SIP. (*Safe Air for Everyone v. USEPA*, 475 F.3d 1096, amended 488 F.3d 1088 (9th Cir 2007)). On January 30, 2007 (as amended on May 29, 2007), the Court granted the

petition for review, vacated the 2005 SIP approval, and remanded the matter to the EPA.

Subsequent to the remand, Idaho initiated a negotiated process to revise the challenged portions of the 2003 SIP revision request. As described in more detail below, this negotiated process included discussions with representatives of the State, the IDEQ, the Idaho State Department of Agriculture (ISDA), Safe Air For Everyone, (SAFE), numerous agricultural organizations, and farmers who burn crop residue. As a result of the negotiations, the State has revised its approach to the open burning of crop residue, enacted new legislation addressing the practice, and has developed draft rules for submission to the EPA.

## II. Proposed Action

For the reasons discussed below, this action proposes to approve the State's draft revised open burning rules, including the revisions to allow the open burning of crop residue, and the provision addressing visible emissions. More specifically, we are proposing to approve the 2008 draft SIP revision request (IDAPA 58.01.01.600–603, 606, 617–623, and 625) that includes both draft changes to the general open burning rules that were contained in the 2003 SIP revision request and draft changes to those rules that specifically relate to crop residue burning. We are also proposing to approve the portion of the 2003 SIP revision request (IDAPA 58.01.01.604, 607–610, 612, 613, 615 and 616) that would not be changed by the 2008 draft SIP revision request and that is currently not part of the federally approved Idaho SIP due to the Court's remand and vacatur of our 2005 SIP approval of the 2003 submission. We are proposing to approve the draft 2008 revisions and the unchanged 2003 submission provisions because they meet the requirements of the Clean Air Act.

For organizational ease, section A below provides a discussion of the changes submitted to IDAPA 58.01.01.600 through 616, which we will refer to as Idaho's general open burning rules. Section B below discusses IDAPA 58.01.01.617 through 623, which we will refer to as Idaho's crop residue burning rules. We will also discuss in Section B the provision addressing visible emissions at IDAPA 58.01.01.625.05 and a new statutory provision, Idaho House Bill 557, which authorizes the open burning of crop residue and the IDEQ's adoption of implementing rules.

The EPA has also prepared a Technical Support Document (TSD) with more detailed information about the SIP revisions Idaho has asked us to approve. The TSD is available for review as part of the docket for this action.

### A. General Open Burning Rules at IDAPA 58.01.01.600 through 616

Due to the Court's remand and vacatur of our 2005 SIP approval of the 2003 SIP revision request, our most recent approval of the general open burning rules in Idaho's SIP that remains in effect was published on January 16, 2003 (68 FR 2217) (2003 SIP approval). That 2003 SIP approval was not challenged by any party. Since then, the IDEQ has made a number of changes to its general open burning rules. IDAPA 58.01.01.600–616. These changes were submitted in both the 2003 SIP revision request and the 2008 draft SIP revision request, and include the following: Minor modifications of existing language, the addition of a provision related to emergency authority, and the deletion of a never-used provision relating to alternatives to open burning.

#### Minor Modifications to Existing Language

The IDEQ made minor modifications to the language in IDAPA 58.01.01.600–602, 606–610, 612–613, and 615–616. These modifications to existing language are either editorial revisions, clarifications of existing provisions, or process revisions. The TSD identifies each provision, indicates whether it was submitted in the 2003 or 2008 SIP revision requests, and describes how the modification compares to the existing federally approved SIP as reflected in the 2003 SIP approval. By the nature of these types of modifications, they have no substantive impact on rule requirements and, therefore, meet the requirements of the Act and are approvable.

#### Emergency Authority Provision

The IDEQ also revised IDAPA 58.01.01.603.02 to provide that "In accordance with Title 39, Chapter 1, Idaho Code, the Department [IDEQ] has the authority to require immediate abatement of open burning in cases of an emergency requiring immediate action to protect human health or safety." This provision, submitted as part of the 2003 SIP revision request, reiterates the existing authority provided in Title 39, Chapter 1, Idaho Code (and approved in the unchallenged 2003 SIP approval) to require immediate abatement of air pollution in emergency cases and

clarifies that the emergency authority may be used for open burning. Idaho Code section 39–112. Because the addition of this provision clarifies and does not change the IDEQ's emergency authority in the existing SIP to protect human health or safety, it is approvable.

#### Alternatives to Open Burning.

In the 2003 SIP revision request, the IDEQ also deleted IDAPA 58.01.01.604—Alternatives to Open Burning, from its rules. Under this provision, two years from the date an economical and reasonable alternative to a specific usage of open burning is approved by the Director of the IDEQ, that usage of open burning is no longer allowed. Under IDAPA section 58.01.01.604, the approval of alternatives is discretionary and to date has not been used. While the EPA continues to encourage alternatives to open burning, the removal of this provision has no substantive impact on existing federally-approved requirements that would have been affected had the IDEQ Director ever approved such an alternative. Therefore we propose to approve the removal of section 58.01.01.604 from the Idaho SIP.

In light of the nature of the revisions discussed above to IDAPA 58.01.01.600–602, 606–610, 612–613, and 615–616 (editorial, process revisions, clarification of the emergency provision, and the deletion of a discretionary and never-used before provision), we are proposing to approve these revisions because they meet all of the requirements of the Clean Air Act. See the Technical Support Document for specific comparisons of these revisions to the existing federally approved SIP as reflected by the 2003 SIP approval.

### B. Crop Residue Disposal Rules at IDAPA 58.01.01.617 through 623, Provision Addressing Visible Emissions at IDAPA 58.01.01.625 and New Legislation

The crop residue disposal rules at IDAPA 58.01.01.617 through 623 and the provision addressing visible emissions at IDAPA 58.01.01.625 and accompanying materials supporting these rules are contained in the 2008 draft SIP revision request. According to the 2008 draft SIP revision request, these rules were submitted as a result of the Ninth Circuit Court of Appeals decision in *Safe Air for Everyone v. USEPA*, 475 F.3d 1096, amended 488 F.3d 1088 (9th Cir 2007) and of the subsequent efforts of stakeholders. The stakeholders negotiated an agreement after the Court's decision to ensure protection of the public health and the

environment and that allows growers to burn crop residue when certain conditions are met.

Below is a history of the 2008 draft SIP revision request, the stakeholder agreement points, our analysis of the resulting statute and administrative rules, and the basis for our proposed approval of these provisions in the 2008 SIP revision request.

#### 1. Background

The open burning of agricultural fields is a historic agricultural practice in Idaho. As early as 1970, Idaho adopted open burning rules that specifically included agricultural burning as a category of allowable burning. The EPA approved these provisions into the Idaho SIP on May 31, 1972, and re-approved them on July 28, 1982. 37 FR 10861 and 47 FR 32530.<sup>1</sup> A series of events, including the Idaho Legislature's enactment of the 1985 Smoke Management Act (House Bill 246, 41st Legislature, 1985), which specifically acknowledged crop residue burning and prohibited the IDEQ from regulating it, led to the subsequent submission of a SIP revision in the early 1990s that no longer included crop residue burning as an allowable form of open burning. The EPA approved this revision to Idaho's SIP on July 23, 1993. 58 FR 39445. (As further addressed below, it was this EPA SIP approval in 1993 that first rendered, albeit unintentionally, open burning of agricultural fields a prohibited act under the approved Idaho SIP, as interpreted by the 9th Circuit.)

In 1999, the Idaho Legislature repealed the 1985 Smoke Management Act and in its place enacted the Smoke Management and Crop Residue Disposal Act (House Bill 342, 55th legislature, 1999). This Act authorized ISDA to promulgate rules regarding crop residue disposal and removed the prohibition against the IDEQ from doing so. The IDEQ subsequently amended its rules to recognize the open burning of crop residue. This rule, IDAPA 58.01.01.617, was submitted in 2003 to the EPA as a SIP clarification and the EPA approved that rule in 2005. 70 FR 39658 (July 11, 2005). SAFE filed a petition for judicial review, asserting that the SIP previously prohibited crop residue burning and now allowed it as a result of the EPA's 2005 approval of the 2003 SIP revision request. SAFE claimed that the EPA incorrectly viewed the previously approved SIP as already allowing open burning of agricultural fields. The Ninth

Circuit Court of Appeals agreed with SAFE's arguments, granted the petition for review, vacated the EPA's 2005 SIP approval of the 2003 SIP revision request, and remanded it back to the EPA to consider the amendment a change to the pre-existing SIP rather than a clarification. The Ninth Circuit determined that the pre-existing SIP did not allow the open burning of crop residue and that further analysis under Clean Air Act sections 110(l) and 193 by the EPA was required. The decision made clear that under the existing federally approved SIP, open burning of crop residue on state lands in Idaho was prohibited.

Subsequent to the Ninth Circuit's decision, the parties to the lawsuit, and other key stakeholders, began discussions regarding the open burning of crop residue (crop residue burning) program and the SIP revision submittal components required to satisfy the Act. Central parties to these discussions included representatives from SAFE, IDEQ, ISDA, and numerous agricultural organizations and farmers who burn crop residue. EPA did not participate directly in the stakeholder discussions, but was kept informed of their progress. After several months of discussion, an independent mediator was hired by the State to assist in the negotiation of an agreement among the non-federal stakeholders.

In December 2007, agreement points among the non-federal stakeholders were reached. The State summarizes the agreement in the 2008 draft SIP revision request as an agreement (1) that DEQ would administer the crop residue burning program (in the past the ISDA administered the program), (2) to model the program after the Nez Perce Tribe crop residue burning program, specifically to protect air quality to 75% of the NAAQS, (3) to incorporate the transparency aspects of the Washington State Department of Ecology program, (4) to examine the adequacy of the existing monitoring network, (5) to build in cooperation with other smoke management regulators, (6) to conduct monitoring and exposure studies if grant money is available, and (7) to conduct an air quality analysis prior to authorizing the annual open burning of 20,000 acres or more of bluegrass.

#### Legislation

Subsequent to the December 2007 agreement among the non-federal stakeholders, House Bill 557 was drafted to reflect the agreement points. The bill was passed by the Idaho Legislature, signed by the Governor and became effective on March 7, 2008.

House Bill 557 adds a new section, section 38–114, to the Environmental Protection and Health Act. This section establishes a crop residue program within the IDEQ. It specifically provides that the open burning of crop residue to develop physiological conditions conducive to increase crop yields, or control diseases, insects, pests or weed infestations, shall be an allowable form of open burning, such that it is expressly authorized as referenced in Section 52–108 Idaho Code,<sup>2</sup> so long as the open burning is conducted in accordance with the provisions of this section and the rules promulgated pursuant to this chapter. It also amends Idaho's Public Records Act to allow for the disclosure of information regarding property locations of fields to be burned, persons responsible for the burn, and acreage and crop type for crop residue to be burned.

Importantly, the Bill also requires any person desiring to burn crop residue to obtain prior approval from the IDEQ, and, further, provides that the IDEQ is prohibited from approving a burn if it determines that ambient air quality levels: “(a) [a]re exceeding, or are projected to exceed, seventy-five percent (75%) of the level of any national ambient air quality standard (NAAQS) on any day, and these levels are projected to continue or recur over at least the next twenty-four (24) hours; or (b) [h]ave reached, or are forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter pursuant to section 556 of IDAPA 58.01.01, rules for the control of air pollution in Idaho.” Idaho Code Section 39–114(3)(a).

House Bill 557 also explains that IDEQ will make available to the public, prior to the burn, information regarding the date of the burn, location, acreage and crop type. Furthermore, the Bill requires the IDEQ to conduct additional air quality analysis if the agricultural community desires to burn more than 20,000 acres of bluegrass within the state. Additionally, the Bill requires a \$2/acre fee be paid to IDEQ prior to burning.

#### Negotiated Rulemaking

After House Bill 557 was passed, the Idaho Department of Environmental Quality Board adopted rules implementing House Bill 557 and reflecting the December 2007 agreement relating to crop residue disposal. At the same time, a provision addressing visible emissions was added at IDAPA

<sup>1</sup> Section 1153.08 of these rules specifically identifies agricultural burning as a category of allowable burning.

<sup>2</sup> Section 52–103 Idaho Code provides “Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.”

58.01.01.625.05 providing that the visible emissions requirements in IDAPA 58.01.01.625 shall not apply to the open burning of crop residue. These crop residue disposal rules and the new provision addressing visible emissions were developed through Idaho's negotiated rulemaking process.<sup>3</sup> This process was open to the public and included representatives from the negotiation team. The rules and visible emissions provision became effective on April 2, 2008. A state public hearing is scheduled for May 2, 2008.

In summary, the negotiated rules provide for the open burning of crop residue through a *Permit by Rule* program at IDAPA 58.01.01.617 through 623 and address visible emissions requirements at IDAPA 58.01.01.625.05. These rule changes are discussed below.

#### *Description of the Crop Residue (Permit by Rule) Burning Program*

IDAPA 58.01.01.617 provides that the open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with provisions contained in IDAPA 58.01.01.618 through 623. Under these rules, no person shall conduct an open burn of crop residue without obtaining the applicable permit by rule. IDAPA 58.01.01.618 contains the general requirements for obtaining a permit by rule, IDAPA 58.01.01.619 and 620 contain the registration and fee requirements for obtaining a permit by rule, IDAPA 58.01.01.621 contains burn determination criteria and a Web site notification process, IDAPA 58.01.01.622 provides general provisions (covering such items as training requirements, reporting requirements, and certain limitations on burning), and IDAPA 58.01.01.623 provides requirements for public notification. In brief, under these requirements, a person desiring to burn crop residue must register at least thirty days in advance of the date of the proposed burn, pay a fee at least seven days prior to the burn, contact DEQ for initial approval at least 12 hours prior to the burn, obtain final approval from the IDEQ the morning of the burn, and submit a post-burn report to the IDEQ. In addition, all persons intending to

<sup>3</sup> Idaho's negotiated rulemaking process is an informal process open to the public and intended to improve the substances of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rule-making; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. See Section 67-5220, Idaho Code and IDAPA 04.11.01.810 through 819.

dispose of crop residue through burning must abide by all of the general provisions in IDAPA 58.01.01.622.

The burn criteria for the IDEQ to approve a request to burn are described in IDAPA 58.01.01.621. Importantly, before approving a permittee's request to burn, the IDEQ must determine that ambient air quality levels do not exceed seventy five percent of the level of any National Ambient Air Quality Standards (NAAQS) on any day and are not projected to exceed such level over the next 24 hours. In addition, the IDEQ must determine that ambient air quality levels have not reached, and are not forecasted to reach and persist at, eighty percent of the one hour action criteria for particulate matter under IDAPA 58.01.01.556.<sup>4</sup> Thus, IDEQ will not approve a burn if these levels are expected to be exceeded as a result of the burn. In determining whether to approve the burn, DEQ must consider the expected emissions from the proposed burn, the proximity of the proposed burn to other burns, the moisture content of the fuels, the acreage, crop type and other fuel characteristics, existing and expected meteorological conditions, the proximity of the proposed burn to institutions with sensitive populations, public roadways, and airports, and other relevant factors. IDAPA 58.01.01.621.01. The IDEQ must also notify the public as provided in IDAPA 58.01.01.623.

The new rules include a number of general provisions that apply to all persons intending to dispose of crop residue through burning. For example, the rules allow burning to be conducted only on designated burn days, and provide that burning shall not be conducted on weekends, holidays or after sunset or before sunrise. Additionally, the person conducting the burn must have a portable communication device, like a cellular phone; must attend crop residue burning training; and must submit a post burn report to IDEQ. IDAPA 58.01.01.622.01.

An Operating Guide to be developed by IDEQ will serve as the main crop residue burning Smoke Management Program implementation tool. The Operating Guide will incorporate the applicable agreement points in the December 2007 agreement, air quality rule requirements, elements of the Nez Perce smoke management program, elements of the Washington smoke management program, and elements specific to Idaho's program including

<sup>4</sup> The current on hour action criteria under IDAPA 58.01.01.556 is an average of 80  $\mu\text{g}/\text{m}^3$  for  $\text{PM}_{2.5}$  and an average of 385  $\mu\text{g}/\text{m}^3$  for  $\text{PM}_{10}$ .

specific meteorological, air quality, and burn parameters required for burn approval. More information about the Operating Guide can be found in Section 6.1.6 of the 2008 draft SIP revision request.

The IDEQ has not submitted this Operating Guide as part of its 2008 SIP revision request, and the EPA is not relying on it, or its details, for purposes of proposing approval of the SIP. Further, the Operating Guide may not be read, or be changed, in a way that substantively modifies the terms that are approved into the SIP. Only by formally adopting under State law and submitting revised statutory and/or regulatory requirements to the EPA, may a State seek to revise its federally approved and enforceable SIP, and EPA approval of such submission is required before a SIP's enforceable requirements may be modified. Therefore, the EPA considers Idaho's Operating Guide, once it is developed, to not have any potential effect on the SIP requirements we are proposing to approve today.

#### *Provision Addressing Visible Emissions at IDAPA 58.01.01.625*

IDAPA 58.01.01.625.05 contains a general 20% opacity visible emission limitation and provides that EPA Method 9 at 40 CFR Part 60 is generally the appropriate test method. In 2008, as part of the negotiated rulemaking, IDEQ added a new provision to IDAPA 58.01.01.625 to specify that section 625 "shall not apply to the open burning of crop residue." Section 6.1.3 of the 2008 SIP revision request explains that, as in the Nez Perce Tribal Federal Implementation Plan, 40 CFR 49.124(c), and the previous Idaho Smoke Management and Crop Residue Disposal Act, the stakeholders also agreed in the negotiated rulemaking that the opacity standard in IDAPA 58.01.01.625 shall not apply to the open burning of crop residue.

#### 2. Section 110(l) Requirements

Under section 110(l) of the Clean Air Act, the Administrator may not approve a SIP revision "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the Act]."

To address this requirement, the EPA reviewed and analyzed air monitoring data from Federal Reference Method (FRM) and Federal Equivalent Method (FEM) monitors in Idaho's EPA-approved monitoring network and compared the data to the National Ambient Air Quality Standards

(NAAQS) for all pollutants.<sup>5</sup> Idaho's network, as it was most recently approved by the EPA on November 21, 2007, includes 25 FEM and FRM monitors throughout the state. Idaho also operates about a dozen other monitors that are not FEM or FRM monitors that support IDEQ's air quality forecasting and smoke management programs. More than half of the total monitors are PM<sub>2.5</sub> monitors.

Open burning of crop residue has been a common practice in many parts of Idaho for decades and continued through 2006, notwithstanding the fact of the Ninth Circuit's 2007 ruling that the EPA-approved SIP prohibited such burning. Consequently, the air quality monitoring data obtained in Idaho prior to 2007 would include the actual air quality impacts associated with crop residue burning that are detectable by Idaho's monitors.<sup>6</sup> Therefore, review and analysis of the monitoring data also reflects analysis of any impacts detected by the monitors resulting from crop residue burning.

Specifically, our review focused on air quality data collected by Idaho's EPA-approved monitoring network and entered into the EPA's Air Quality System (AQS) over the past 10 years (1997 to 2007). This ten year timeframe is consistent with the period the EPA uses for criteria air pollutant summary reports that are extracted routinely from AQS (e.g., AirData reports), and it is also the period specified for certain air quality planning requirements under the Clean Air Act. See section 175A of the Act.

Based on our review of these monitoring data, there is no evidence from the monitors of a violation of the NAAQS as a result of the open burning of crop residue. We considered all of the NAAQS pollutants and reviewed the monitoring data for the entire state. The most relevant pollutants for this discussion are PM<sub>2.5</sub>, PM<sub>10</sub>, and ozone. PM<sub>2.5</sub> and ozone are relevant because the EPA's recent review of the NAAQS for these pollutants resulted in more stringent standards (71 FR 61144 (October 17, 2006) and 73 FR 16426 (March 27, 2008)) and monitoring data indicate that these new standards may be exceeded in some areas in Idaho. PM<sub>10</sub> is relevant because the only existing nonattainment areas in Idaho are for PM<sub>10</sub>. There are no nonattainment areas for carbon monoxide, sulfur dioxide, nitrogen

dioxide or lead. AQS data show the levels of these pollutants are well below the standards.

#### PM<sub>2.5</sub>

There are two areas in Idaho with design values<sup>7</sup> above the NAAQS for PM<sub>2.5</sub>.<sup>8</sup> These areas are the Pinehurst area and the Franklin County area. In December 2007, both areas were recommended by Idaho as PM<sub>2.5</sub> nonattainment areas for the 24 hour PM<sub>2.5</sub> NAAQS.

The Pinehurst area historically experiences wintertime (November through February) stagnation events. Consistently, data show that past exceedances have occurred almost exclusively during the wintertime and not when the open burning of crop residue typically occurs (March and April for the spring crop burning season and mid-July through the end of October for the fall crop burning season). According to Idaho's December 2007 recommendation letter, the main emission sources contributing to PM<sub>2.5</sub> in the Pinehurst area are residential wood heating, vehicles, open burning of yard debris, and slash burning. Idaho attributed none of the exceedances of PM<sub>2.5</sub> to the burning of crop residue.

The Franklin County area also experiences wintertime stagnation events, and the data show that past PM<sub>2.5</sub> exceedances have occurred in the wintertime; not when the open burning of crop residue typically occurs. Idaho's December 2007 recommendation letter identifies the main emission sources contributing to PM<sub>2.5</sub> in Franklin County as vehicle, residential wood heating, and agriculture (feedlot and dairy ammonia). Like for Pinehurst, Idaho attributed none of the PM<sub>2.5</sub> exceedances in Franklin County to the burning of crop residue.

#### PM<sub>10</sub>

For PM<sub>10</sub>, we reviewed air quality data for the only two nonattainment areas in Idaho under Idaho jurisdiction.<sup>9</sup>

<sup>7</sup> A design value is a statistic that describes the air quality status of a given area relative to the level of the National Ambient Air Quality Standards (NAAQS).

<sup>8</sup> PM<sub>2.5</sub> refers to particles with a nominal mean aerodynamic diameter less than or equal to 2.5 micrometers. The annual standard is 15 micrograms per cubic meter, based on the 3-year average of annual mean PM<sub>2.5</sub> concentrations. The 24-hour standard is 35 micrograms per cubic meter, based on the 3-year average of the 98th percentile of 24-hour concentrations.

<sup>9</sup> One other area, the Fort Hall nonattainment area (located on the Fort Hall Reservation), is also designated nonattainment for PM<sub>10</sub>. Recent data show that PM<sub>10</sub> air monitoring values for this area are also well below the NAAQS. Since the shutdown of the FMC facility in the Fort Hall nonattainment area in December 2001, PM<sub>10</sub> levels

These are Pinehurst and Sandpoint, both of which are designated nonattainment areas for the PM<sub>10</sub> NAAQS.<sup>10</sup> Both have been meeting the PM<sub>10</sub> NAAQS for more than 10 years and have PM<sub>10</sub> design values well below the NAAQS.<sup>11</sup>

#### Ozone

Although AQS data show that all areas in Idaho are meeting the existing 8 hour NAAQS for ozone, the EPA recently revised and lowered the standard, effective May 27, 2008.<sup>12</sup> At the new level, our initial review of AQS data shows that the design value for one area, the Boise, Idaho area, may be above the new NAAQS based on 2005–2007 data. Further review shows that the highest values have been measured typically in the hottest summer months of July and August. Since crop residue burning has occurred historically in August, we can not rule out the possibility of precursors to ozone<sup>13</sup> from crop residue burning contributing to high ozone days. But as discussed below, the new crop residue disposal rules have safeguards that address the possibility of such contributions, and that would preclude crop residue burning on days when a NAAQS exceedance might occur.

In sum, the past ten years of air quality data show no monitored evidence that the burning of crop residue has led to a violation of the NAAQS. To the extent that the burning of crop residue may contribute to exceedances of the revised NAAQS for ozone and PM<sub>2.5</sub>, the provisions in IDAPA 58.01.01.617 through 623 of Idaho's new crop residue burning program adequately addresses those concerns by preventing crop residue burning on days when a NAAQS exceedance may occur. Specifically, IDAPA 58.01.01.621 prohibits burn approval if ambient air quality levels exceed seventy-five percent of the level of any NAAQS on any day or if those levels are projected to exceed such level over the next twenty-four hours. In

have been well below the standard, except for a few days when there were also high winds.

<sup>10</sup> The 24 hour PM<sub>10</sub> NAAQS is 150 µg/m<sup>3</sup>.

<sup>11</sup> Over the past 10 years, Sandpoint has had no exceedances of the PM<sub>10</sub> NAAQS and Pinehurst has had only one, on February 19, 1998. However, the Pinehurst exceedance did not result in a violation and was not likely the result of the open burning of crop residue because such burning does not typically occur during that time of year.

<sup>12</sup> The 8-hour ozone standard was lowered from 0.08 parts per million to 0.075 parts per million. States must make recommendations to EPA no later than March 2009 for areas to be designated attainment, nonattainment and unclassifiable.

<sup>13</sup> Products of incomplete combustion include volatile organic compounds and nitrogen oxides, both of which are precursors to ozone.

<sup>5</sup> The NAAQS pollutants are carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide.

<sup>6</sup> Following the 9th Circuit's ruling, crop residue burning did not occur in Idaho in 2007 on fields under state jurisdiction.

addition, the rules specifically prohibit burn approval if the ambient air quality levels have reached or are forecasted to reach and persist at, eighty percent of the one hour action criteria for particulate matter. Thus, under these provisions, the burning of crop residue would simply not occur if air quality levels exceed the NAAQS or if burning could result in a NAAQS exceedance.

In addition, pursuant to IDAPA 58.01.01.621.01 a. through i., the IDEQ may also consider a number of additional factors, in deciding whether to approve a particular burn request. The factors include consideration of the expected emissions from all burns proposed for the same date; the proximity of other burns as well as potential emission sources within the area to be affected by the proposed burn; the moisture content of the material to be burned, the acreage, crop type, and fuel characteristics, meteorological conditions, proximity to institutions with sensitive populations such as schools, hospitals and residential health care facilities;<sup>14</sup> proximity to public roadways or airports; and other factors relevant to preventing exceedances of the air quality concentrations in the IDAPA 58.01.01.621. Consideration of these factors will help ensure that the crop residue burning will not interfere with the NAAQS or any other applicable requirement of the Act.

Idaho Code 39-108 provides DEQ with investigation, inspection, and enforcement authority over violations of Idaho Code 39-114 (the air quality rules) and a Permit by Rule issued pursuant to the Air Quality Rules. A notice of violation with a penalty of up to \$19,000 per day per violation may be assessed. Idaho Code 39-108(30) and (5). Civil and criminal enforcement actions may be taken for violations pursuant to Idaho Code 39-109.

#### Supporting Materials in the 2008 Draft SIP Revision

In the 2008 draft SIP revision request, the IDEQ submitted additional documentation and analysis showing that past smoke management practices in Idaho did not contribute to NAAQS violations. The draft SIP revision request includes additional technical analysis, including analysis of air quality, meteorology, emissions inventory, and non-regulatory modeling to show that the crop residue burning activity in the State of Idaho is not causing nor significantly contributing to

a violation of the NAAQS. The IDEQ also provided its rationale for the provision added at IDAPA 58.01.01.625.05 addressing visible emissions. It explains that, as in the FIP for the Nez Perce Reservation, 40 CFR 49.124(c), and the previous Smoke Management and Crop Residue Disposal Act, the stakeholders also agreed in the negotiated rulemaking that the opacity standard in IDAPA 58.01.01.625 shall not apply to the open burning of crop residue (IDAPA 58.01.01.625.05).

We acknowledge that the Federal Air Rules for Reservations (FARR) exclude open burning from the visible emissions requirements. 70 FR 18074 (April 8, 2005). The FARR established the basic air quality rules for all of the Indian Reservations in Idaho, Oregon and Washington. Thus, these requirements apply not only to the Nez Perce Indian Reservation, but to all Indian Reservations in Idaho, Oregon, and Washington. Therefore, open burning on any of these reservations is not subject to the visible emission standards on any of these reservations.

When promulgating the FARR, the EPA stated that "EPA is also proposing specific exemptions to the rule in a manner similar to the State and local agency rules in the docket. These exemptions include sources or activities for which compliance with the opacity rule would not be feasible or would impose unreasonable costs (e.g., open burning, agricultural activities, residential space heating, public roads, sweat lodges, non-commercial smoke houses)." (Technical Support Document for the FARR, Docket ID No. OAR-2004-0067, page 18.) Recognizing we have promulgated an exemption from the visible emissions standard for open burning in the past "in a manner similar to the State and local agency rules," the EPA determines that the State's new provision regarding visible emissions is reasonable.

In sum, based on our review of past air quality monitoring data for Idaho, the supporting material provided by the IDEQ, and the crop burning provisions at IDAPA 58.01.01.617 through 623, we conclude that the open burning revisions related to crop residue burning (IDAPA 58.01.01.617 through 623) and the provision addressing visible emissions at IDAPA 58.01.01.625.05, would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

#### 3. Section 193 Requirements

Section 193 of the Act provides that no control requirement in effect, or required to be adopted by an order,

settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant, may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

The Clean Air Act Amendments of 1990 were enacted on November 15, 1990. Therefore, the question is whether the open burning revisions and the provision addressing visible emissions in the 2008 draft SIP revision request insure equivalent or greater emission reductions compared with the open burning requirements for crop residue disposal and the provisions addressing visible emissions in nonattainment areas reflected in the approved Idaho SIP before November 15, 1990.

According to information from IDEQ, the burning of crop residue does not occur within the boundaries of either of Idaho's two nonattainment areas (Pinehurst and Sandpoint). Because section 193 applies only to requirements in effect as of November 15, 1990, in nonattainment areas and no burning of crop residue occurs in any of Idaho's nonattainment areas, we conclude that the requirements in section 193 are met. Within Idaho's nonattainment areas, exempting crop residue burning from the visible emissions standard has no effect on the emissions reductions achieved by the visible emissions requirements. Therefore, the SIP modification insures equivalent emissions reductions in those nonattainment areas.

Moreover, specifically regarding allowing crop residue disposal burning as a lawful form of open burning, based on our review of the SIP in effect before November 15, 1990, and the 2008 draft SIP revision request, we have determined that the 2008 draft SIP revision insures equivalent or greater emission reductions than the pre-November 15, 1990, Idaho SIP. The SIP in effect in Idaho before November 15, 1990, allowed the open burning of crop residue. Specifically, Title 1, Chapter 1 of Idaho's Rules and Regulations for the Control of Air Pollution in Idaho Manual provided "[t]he open burning of plant life grown on the premises in the course of any agricultural, forestry, or land clearing operation may be permitted when it can be shown that such burning is necessary and that no fire or traffic hazard will occur..."<sup>15</sup> The

<sup>14</sup> The rule explicitly provides that the Department shall NOT authorize a burn if conditions are such that institutions with sensitive populations will be adversely impacted or when the plume is expected to impact such institutions.

<sup>15</sup> This language is found in section 1153.08 and reads in full: "The open burning of plant life grown on the premises in the course of any agricultural,

EPA approved these provisions on May 31, 1972, and re-approved them on July 28, 1982. 37 FR 10861 and 47 FR 32530. This SIP applied statewide and allowed open burning of crop residue if minimal conditions were met. Although the SIP provisions included conditions intended to minimize the effects of burning, the conditions were vague. For instance they required that the burning be necessary and that “no fire or traffic hazard will occur” (at section 1153.08) and to “make every reasonable effort to burn only when weather conditions are conducive to a good smoke dissipation.” (at section 1153.08(a)). These provisions were in effect in Idaho’s federally-approved SIP as of November 15, 1990. The rule provisions that the Ninth Circuit determined prohibit the burning of crop residue were not approved into the federally-approved SIP until July 23, 1993. 58 FR 39445.

In contrast, the 2008 draft SIP revision request is more specific and contains numerous and explicit procedures and measures to limit emissions associated with crop residue burning. For example, prior to conducting a burn, a person must obtain a permit by rule as defined in IDAPA 58.01.01.618. Any person applying to burn crop residue must register annually and provide detailed and specific information to the IDEQ regarding a proposed burn. Additionally, prior to conducting the burn, a person must receive a specific approval from the IDEQ to conduct the burn and must confirm the approval on the morning of the burn. As discussed above, the IDEQ’s approval of burn requests is tied to specific air quality levels below the NAAQS and burning is completely prohibited on certain days and at certain times. Other conditions require that special consideration be made for sensitive populations and are designed to ensure the public is notified and has ready access to burn call information. In light of these more specific and more stringent provisions,

forestry, or land clearing operation may be permitted when it can be shown that such burning is necessary and that no fire or traffic hazard will occur. Convenience of disposal is not of itself a valid necessity for burning. 1. It shall be the responsibility of any person conducting such burning to make every reasonable effort to burn only when weather conditions are conducive to a good smoke dissipation and only when an economical and reasonable alternate method of disposal is not available. 2. When such alternate method is made available, it shall be put into use within a reasonable time. 3. Any person conducting an agricultural, forestry, or land clearing burning operation similar to an operation carried out by a governmental agency shall follow the rules and procedures of the agency with regard to minimizing air pollution. 4. When such burning creates air pollution or a public nuisance, additional restrictions may be imposed to minimize the effect upon the environment.

the EPA concludes that the approval of the 2008 draft SIP revision request will insure equivalent or greater emission reductions than did the Idaho SIP in effect on November 15, 1990.

The IDEQ also provides discussion of whether the 2008 draft SIP revision request insures equivalent or greater emission reductions compared to Idaho’s pre-November 15, 1990, federally-approved SIP. It points out that the SIP in place before 1990 required no air quality impact analysis and applied not only to crop residue grown in the field generated but to any plant life grown on any agricultural operation. It also points out that prior to 1990, Idaho’s SIP authorized the broad practice of agricultural burning. It stated: “The open burning of plant life grown on the premises in the course of any agricultural, forestry or land clearing operating may be permitted when it can be shown that such burning is necessary and no fire or traffic hazard will occur. Convenience of disposal is not of itself a valid necessity for burning.” 37 FR 10842, 10861 (May 13, 1972).

The IDEQ also explains that the crop residue burning program provided in the 2008 draft SIP revision request creates a stronger, more protective program than that in place prior to 1990. Moreover, it adds, the only two nonattainment areas in the state, Sandpoint and Pinehurst, in which crop residue disposal burning does not occur, experience high concentrations of particulate matter in winter months, not in the early fall months when crop residue burning mainly occurs in other areas. The IDEQ points to these considerations and the required implementation of other control measures for these areas, and concludes that the SIP revision will not in any way relax any other control requirement in effect in the Pinehurst or Sandpoint nonattainment areas.

### III. Scope of Proposed 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>16</sup> Therefore,

<sup>16</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

the 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 the EPA’s previous approval of Idaho’s PSD program, in which the 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 the 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).<sup>17</sup>

### IV. 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 Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 proposed 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

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.

<sup>17</sup> Since the CAA was amended in 1990, EPA has been clear in its approvals of State programs that the approved State program does not extend into Indian country. It is EPA’s position that, absent an explicit finding of jurisdiction and approval in Indian country, State and local governments lack authority under the CAA over air pollution sources, and the owners or operators of air pollution sources, throughout Indian country.

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.

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 21, 2008.

**Elin D. Miller,**  
*Regional Administrator, Region 10.*

40 CFR part 52 is proposed to be 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, the table in paragraph (c) is amended as follows:
- a. By revising entries 600 through 603.
  - b. By revising entries 606 through 610.
  - c. By revising entries 612 and 613.
  - d. By revising entries 615 though 617.
  - e. By adding in numerical order entries 618 though 623.
  - f. By revising entry 625.

**§ 52.670 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA—APPROVED IDAHO REGULATIONS**

[Idaho Administrative Procedures Act (IDAPA) Chapter 58, Rules for the Control of Air Pollution in Idaho, Previously Codified at IDAPA Chapter 39 (Appendix A.3)]

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>58.01.01—Rules for the Control of Air Pollution in Idaho</b>				
600	Rules for Control of Open Burning.	4/02/08	4/29/08	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
601	Fire Permits, Hazardous Materials and Liability.	4/02/08	4/29/08	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
602	Nonpreemption of Other Jurisdictions.	4/02/08	4/29/08	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
603	General Restrictions	4/02/08 3/21/03 5/1/94	4/29/08	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
606	Categories of Allowable Burning.	4/02/08	4/29/08	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
607	Recreational and Warming Fires.	3/21/03	4/29/08	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
608	Weed Control Fires	5/1/94	4/29/08	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
609	Training Fires	3/21/03	4/29/08	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.

EPA—APPROVED IDAHO REGULATIONS—Continued

[Idaho Administrative Procedures Act (IDAPA) Chapter 58, Rules for the Control of Air Pollution in Idaho, Previously Codified at IDAPA Chapter 39 (Appendix A.3)]

State citation	Title/subject	State effective date	EPA approval date	Explanations
610	Industrial Flares	3/21/03	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
*	*	*	*	*
612	Landfill Disposal Site Fires	3/21/03	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
613	Orchard Fires	3/21/03 5/1/94	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
*	*	*	*	*
615	Dangerous Material Fires	3/21/03	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
616	Infectious Waste Burning	3/21/03	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
617	Crop Residue	4/02/08	4/29/08 [Insert page number where the document begins].	
618	Permit By Rule	4/02/08	4/29/08 [Insert page number where the document begins].	
619	Registration for Permit By Rule.	4/02/08	4/29/08 [Insert page number where the document begins].	
620	Registration Fee	4/02/08	4/29/08 [Insert page number where the document begins].	
621	Burn Determination	4/02/08	4/29/08 [Insert page number where the document begins].	
622	General Provisions	4/02/08	4/29/08 [Insert page number where the document begins].	
623	Public Notification	4/02/08	4/29/08 [Insert page number where the document begins].	
625	Visible Emissions	4/02/08	4/29/08 [Insert page number where the document begins].	

\* \* \* \* \*

[FR Doc. E8-9269 Filed 4-28-08; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket No. FEMA-B-7774]

**Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in