

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 8 p.m. until 11:59 p.m. (PDT) on August 2nd, 2008, a temporary section § 165.T13–054 is added to read as follows:

§ 165.T13–054 Safety Zone: Lake Washington, WA.

(a) *Location.* The following area is a safety zone: The waters within an area 1000 feet radius centered on the point 47°34'15" N, 122°16'10" W on Lake Washington, Washington.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no vessel may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or his designated representatives.

(c) *Enforcement Period.* From 8 p.m. until 11:59 p.m. on August 2nd, 2008 unless sooner cancelled by the Captain of the Port.

Dated: July 22, 2008.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. E8–17618 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0336; FRL–8697–1]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving 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 proposed to approve this draft SIP revision on April 29, 2008, and stated that, if adopted by the State substantially unchanged from its current form, it would satisfy the requirements of the Clean Air Act (hereinafter the Act or CAA). 73 FR 23155. The Director of the IDEQ submitted a final SIP revision to the EPA on May 28, 2008. Based on EPA's review of this final SIP revision, EPA's analysis and review of the 2008 draft SIP revision (73 FR 23155), and comments received by the EPA during the public comment period on EPA's proposed approval of the draft SIP revision, the EPA is approving the final SIP revision submitted by the IDEQ on May 28, 2008, because it satisfies the requirements of the CAA.

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). 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). In the EPA's April 29, 2008, proposal discussed above, the EPA re-proposed 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 also finalizing our approval of this portion of the 2003 SIP revision because it satisfies the requirements of the Act and does not contravene the Court's SAFE decision.

DATES: This action is effective on September 2, 2008.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2008–0336. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information 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 through <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, (206) 553–6706, or by e-mail at deneen.donna@epa.gov.

SUPPLEMENTARY INFORMATION:

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the 9th Circuit by September 30, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Moreover, under CAA section 307(b)(2), the requirements established by this final action may not be challenged separately in any civil or criminal proceedings brought to enforce these requirements.

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. Final 2008 SIP Revision Request
- III. Comments Received During the EPA Public Comment Period
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background

The EPA is approving revisions to Idaho’s SIP relating to open burning and crop residue disposal requirements and to a provision addressing visible emissions. This final approval encompasses a revision relating to IDAPA 58.01.01.600–603, 606, 617–623, and 625, submitted recently by the IDEQ to the EPA on May 28, 2008, and referred to here as the “2008 SIP revision request.” This final approval also encompasses a portion of a revision request relating to IDAPA 58.01.01.604, 607–610, 612, 613, 615 and 616 submitted by the IDEQ to the EPA on May 22, 2003, and referred to here as the “2003 SIP revision request.”

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. 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 developed rules for submission to the EPA.

On April 15, 2008, Idaho submitted a draft SIP revision containing the state’s revised draft rules (the 2008 draft SIP revision request) and a request for parallel processing. The EPA proposed approval of the 2008 draft SIP revision request on April 29, 2008 (73 FR 23155), and explained in its discussion of parallel processing that it 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 (73 FR 23156). In the same notice, the EPA proposed approval of the portion of the 2003 SIP revision request that would not be changed by the 2008 SIP revision request and that was 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. 73 FR 23155. The EPA did not parallel process the portion of the 2003 SIP revision request that was not changed by the 2008 draft SIP revision request or the 2008 SIP revision request because this portion of the 2003 SIP revision request had already been through the state public process, was adopted in its final form under state law, and was officially submitted to the EPA prior to our proposed approval on April 29, 2008 (73 FR 23155). More discussion on the basis for our approval can be found at 73 FR 23155 (April 29, 2008).

II. Final 2008 SIP Revision Request

Idaho initiated a 30-day public comment period on the 2008 draft SIP revision request and, on May 2, 2008, held a public hearing on the request. Idaho subsequently prepared and adopted its final version of the 2008 SIP revision request, and on May 28, 2008, submitted the resulting 2008 SIP revision request to the EPA for final action and approval.

In response to public comments during the state public comment period on its draft SIP revision request, the IDEQ made several clarifications which it included in the final 2008 SIP revision request submitted to EPA. For example, the IDEQ made several clarifications in response to comments

from the Nez Perce Tribe to further clarify that the 2008 SIP revision request did not apply to crop residue burning on Indian Reservations in Idaho and to better clarify where certain technical information in the SIP, such as air monitoring data, pertained to the Nez Perce burn permit program and reservation lands rather than to the IDEQ and state lands.

In response to comments from SAFE, the IDEQ clarified certain criteria for making burning decisions under IDAPA 58.01.01.621.01 and how the IDEQ intends to implement those criteria. For example, the IDEQ confirmed that it will use the data from the continuous PM 2.5 monitors it operates in deciding whether to permit burning in accordance with IDAPA 58.01.01.621.01. The IDEQ also confirmed that it would account for background smoke from wildfires and other burning, including emissions from wildfires and burning in tribal areas and in upwind states, in determining whether the levels that would prohibit burning in IDAPA 58.01.01.621.01 are exceeded or predicted to be exceeded. With respect to the prohibition in IDAPA 58.01.01.621.01.f on authorizing burns if conditions are such that institutions with sensitive populations will be adversely impacted or when the plume is predicted to impact such institutions, the IDEQ clarified that the prohibition would apply to burning within three miles of institutions with sensitive populations when wind speeds exceed 12 miles and that, generally, the wind speed should be within 3 to 8 miles per hour.

The EPA has reviewed the revisions and the submitted clarifications made by the IDEQ in the final 2008 SIP revision request and has determined that the 2008 SIP revision request remains substantially unchanged from the 2008 draft SIP revision request on which the EPA’s proposed approval was based. Based on our review and analysis of the 2008 draft SIP revision request and associated proposed EPA approval on April 29, 2008 (73 FR 23155), Idaho’s public comment period and hearing on the draft 2008 SIP revision request and IDEQ’s responses to comments submitted to EPA following the State’s administrative process, and the comments the EPA received during the public comment period on EPA’s proposed approval, we are taking final action to approve the 2008 SIP revision request. Moreover, based on these factors, we also conclude that approval of the SIP will not interfere with any applicable requirement concerning attainment and reasonable further

progress or any other applicable requirement of the Clean Air Act.

III. Comments Received During the EPA Public Comment Period

The following summarizes the issues raised in comments on the EPA's proposed approval on April 29, 2008 (73 FR 23155), and provides EPA's responses to those issues.

Comment: A number of commenters objected to agricultural field burning and asked the EPA not to approve the 2008 SIP revision request, citing health and general air quality concerns. Some commenters suggested that, by allowing field burning, agribusinesses were getting special treatment and that economic concerns were outweighing health concerns. One commenter added that there are viable alternatives to burning and that the end consumer should bear the true costs of products they demand.

Response: The EPA is aware of and continues to be concerned about the health and welfare impacts associated with crop residue burning in Idaho. In reviewing a SIP revision, EPA's task is to determine whether the SIP revision complies with the requirements of the Clean Air Act. As discussed in the proposal, the burning of crop residue is allowed under the 2008 SIP revision request only after first obtaining a permit and burn approval from the IDEQ. IDAPA 58.01.01.618–621. The IDEQ may approve a burn only if the IDEQ determines that ambient air quality levels do not exceed seventy five percent of the level of any 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 58.01.01.556.¹ 58.01.01.621.01. In making these determinations, the IDEQ 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. Other restrictions on the burning of crop

residue are contained in IDAPA 58.01.01.617 through 623.

In its response to comments during the state public comment process, the IDEQ made clear that it will consider the smoke contribution from other burns, including wildfires and prescribed burns, as well as the contribution from wildfires and other burning on Indian Reservations and upwind states in determining whether the conditions to allow burning are met. The IDEQ also made other important clarifications regarding how the IDEQ intends to implement those criteria. As explained in our proposal, the EPA has determined that the 2008 draft SIP revision request meets the requirements of the Clean Air Act, including section 110(l) of the Act, which prohibits the Administrator from approving 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]." 73 FR 23155 (April 29, 2008). Because the Administrator is required to approve a SIP revision that complies with the provisions of the Clean Air Act and applicable Federal regulations (see 42 U.S.C. 7410(k) and 40 CFR 52.02(a)) and the 2008 SIP revision request complies with those requirements, the EPA is taking final action to approve these revisions to the Idaho SIP.

Comment: Several commenters supported EPA's approval of the state's draft 2008 SIP revision request or agricultural burning. Some thought that restricting field burning was unfair when other types of burning are allowed. Some raised concerns about the economic costs of not burning and losing grass fields and family farms, and in some cases claimed that burning improves air quality because it retains green spaces and prevents those areas from being developed. One commenter that supported burning also acknowledged that there are areas and instances where burning should be tightly monitored and controlled. Some thought burning should be tolerated because it occurs only for a short period during the year.

Response: The EPA acknowledges these commenters' support of the proposed rule. To the extent that the commenters are suggesting the 2008 SIP revision request is too restrictive, however, the EPA adds that it does not have the authority to add or remove restrictions in this rulemaking process and that, in its review of a SIP submission, the EPA's role is to approve or disapprove state choices, based on whether they meet the criteria of the Clean Air Act. In this case, the State of

Idaho chose to adopt and submit provisions relating to the burning of crop residue. Accordingly, this final action merely approves the state program as meeting Federal requirements and does not impose additional requirements.

Comment: One commenter said that the EPA is rushing this decision without adequate time for proper study of the issue and consideration of a fee/compensation program. The commenter further stated that growers should be required to pay sufficient compensation to those damaged by pollution from burning.

Response: The Clean Air Act does not specifically require states to impose a fee or compensation requirement for burn programs. As discussed above, the EPA does not have the authority to add provisions to or to remove restrictions in the state program in this rulemaking process. In our review of a SIP submission, the EPA's role is to approve or disapprove state choices, based on whether they meet the criteria of the Clean Air Act. In any event, Idaho House Bill 557 requires a \$2/acre fee be paid to the IDEQ prior to burning. See also IDAPA 58.01.01.620.

Section 110(a)(2)(E) of the Clean Air Act does require that the state have adequate funding and staff to carry out the provisions of its SIP. The State of Idaho has stated that it has adequate funding and personnel to carry out the procedures identified in the 2008 SIP revision request and refers to funds appropriated by the Idaho Legislature, future receipts for crop residue burning, and an increase in staff to accomplish these tasks (Section 1.6.2 of the 2008 SIP revision request). The EPA relies on these statements made by the IDEQ to conclude that the 2008 SIP revision request meets the requirements of section 110(a)(2)(E) of the Clean Air Act.

The EPA is unclear about what the commenter means by stating that the EPA is rushing this decision without "proper study." The EPA provided a 30 day public comment opportunity on its proposed approval of the 2008 draft SIP revision request at 73 FR 23155 (April 29, 2008). Based on the analysis and review in that proposal, consideration of public comments received by the EPA during the public comment period, and the final 2008 SIP revision request, the EPA concludes that the IDEQ's 2008 SIP revision request meets the requirements of the Clean Air Act.

Comment: One commenter stated that the cumulative effects of smoke generated by fire of all sorts needed to be limited and that there is a need for more and better data about where the smoke from field burning actually goes.

¹ The current one hour action criteria under IDAPA 58.01.01.556 are an average of 80 µg/m³ for PM_{2.5} and an average of 385 µg/m³ for PM₁₀.

Response: In the 2008 SIP revision request, the IDEQ specifically acknowledged that regional coordination of burn decisions and smoke management is important in order to avoid unacceptable cumulative smoke impacts within and across jurisdictions. The IDEQ further explained that it would account for background smoke from wildfires and other burning, including emissions from wildfires and burning in tribal areas and in upwind states, in determining whether the levels that would prohibit burning in IDAPA 58.01.01.621.01 are exceeded or predicted to be exceeded.

As noted above, we reviewed and analyzed the draft 2008 draft SIP revision request in our April 29, 2008, proposal and concluded that the draft 2008 SIP revision request met the requirements of the Clean Air Act.

Comment: The Nez Perce Tribe stated that it supports the EPA's approval of the revisions to Idaho's SIP relating to the open burning and crop residue disposal requirements and visible emissions. The Tribe emphasized the importance of the EPA's acknowledgment in the proposal that the Idaho SIP does not apply within the exterior boundaries of the 1863 Nez Perce Reservation. The Tribe also clarified that it was not a part of the negotiations that led to the development of the 2008 SIP revision request, but that the Tribe's air quality program attended meetings in a technical assistance capacity. The Nez Perce Tribe stated that it is willing to continue to provide technical assistance to the IDEQ and looks forward to working with the IDEQ and the EPA on coordinating smoke management and burn decisions in the Clearwater airshed.

Response: The EPA acknowledges the Nez Perce Tribe's support for the EPA's approval of Idaho's SIP revision request, as well as the Tribe's continued technical support on air quality efforts. As stated in our proposal, the EPA's approval of Idaho's 2008 SIP revision request does not apply to Indian Country in Idaho, including all lands within the exterior boundaries of the Nez Perce Reservation as described in the 1863 Nez Perce Treaty. 73 FR 23162. The EPA also acknowledges the Nez Perce Tribe's role in the development of Idaho's 2008 SIP revision request.

Comment: The Montana Department of Environmental Quality (MDEQ) stated that it supports Idaho's final rules on crop residue burning and the IDEQ's efforts to control the emissions from crop residue burning. In addition, the MDEQ commended the IDEQ's efforts to establish coordination between crop residue burners and other burners to

protect the NAAQS, noting that it particularly supports coordination with the Idaho/Montana Smoke Management Group. The MDEQ also noted its support of Idaho's intent to further study interstate transport issues.

Response: The EPA acknowledges the MDEQ's support of Idaho's final rules relating to the open burning of crop residue and acknowledges the importance of coordination among states and tribes in protecting air quality.

Comment: Safe Air For Everyone (SAFE) stated that, in responding to comments during State administrative proceedings on the 2008 draft SIP revision request, the IDEQ made important commitments regarding implementation of the burn permit program and that SAFE was relying on those commitments to make the SIP effective. SAFE continued that the IDEQ and SAFE had come to a mutual understanding and agreement that both the IDEQ's Response to Comments (included in Appendix E of the 2008 SIP revision request) and Appendix J of the 2008 SIP revision request are part of the SIP. SAFE requested that the EPA confirm that the IDEQ's submitted Response to Comments and Appendix J are part of the federally approved SIP and that the criteria for burn determinations included in the IDEQ's Response to Comments and Appendix J are requirements of the federally approved and federally enforceable SIP. With that understanding, SAFE stated that it fully supports the EPA's approval of the Idaho 2008 SIP revision request. If the EPA does not recognize the criteria for burn determinations in the IDEQ's Response to Comments and Appendix J as part of the federally approved and enforceable SIP, SAFE asserted that the Idaho SIP revision would not be lawful because it would not comply with the Clean Air Act and EPA's implementing regulations for the reasons discussed in SAFE's comments to the IDEQ during the state public comment period. In that event, SAFE requested that the EPA consider the comments SAFE submitted to the IDEQ during Idaho's public comment period as objections to the EPA's approval as well.

Response: In a letter dated June 11, 2008, the IDEQ stated that it had reviewed SAFE's comment letter to EPA, and that the IDEQ had submitted the Response to Comments and Appendix J with the intent that they be considered part of the Idaho 2008 SIP revision request. The IDEQ further acknowledged that, upon the EPA's approval of the Idaho 2008 SIP revision

request, the 2008 SIP revision request will be federally enforceable.

The EPA agrees that both the IDEQ's Response to Comments and Appendix J are part of the 2008 SIP revision request, and, upon the EPA's approval, will be part of the federally approved and federally enforceable Idaho SIP. Our approval of the 2008 SIP revision request relies upon the statements made by the IDEQ throughout the SIP revision, including those statements made in the IDEQ Response to Comments and Appendix J, regarding how the IDEQ intends to implement its crop residue burning program. This includes statements made by the IDEQ in its Response to Comments and Appendix J relating to the criteria for making burning decisions and how the IDEQ intends to implement those criteria. As part of our approval action, the EPA is including Idaho's complete submitted 2008 SIP revision request, including the IDEQ's Response to Comments and Appendix J, in the identification of plan section of the Code of Federal Regulations at 40 CFR 52.670.

As we discussed in the proposal, 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 PM2.5, the provisions at IDAPA 58.01.01.617 through 623 of Idaho's new crop residue burning program adequately address those concerns by preventing crop residue burning on days when a NAAQS exceedance may occur. In addition, the IDEQ provided supporting material, including the 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. Based on the IDEQ's SIP submission, including the IDEQ's Response to Comments and Appendix J, and for the reasons discussed in our proposed approval notice, we conclude that our approval of the Idaho 2008 SIP revision request will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

IV. Final Action

For the reasons provided above and in our proposed rule, we are approving Idaho's 2008 SIP revision request, including the revisions to allow the open burning of crop residue, and the provision addressing visible emissions.

More specifically, we are approving the 2008 SIP revision request relating to IDAPA 58.01.01.600–603, 606, 617–623, and 625 that includes both changes to the general open burning rules that were contained in the 2003 SIP revision request and changes to those rules that specifically relate to crop residue burning. We are also approving the portion of the 2003 SIP revision request relating to IDAPA 58.01.01.604, 607–610, 612, 613, 615 and 616 that was not changed by the 2008 draft SIP revision request and that was 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 approving the State's submitted 2008 revisions and the unchanged 2003 submission provisions because they meet the requirements of the Clean Air Act.

As discussed in the proposal, because Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within "Indian country" as defined in 18 U.S.C. 1151,² this SIP approval does not extend to "Indian country" in Idaho. 73 FR 23162.

V. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the 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 the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the

Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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: July 16, 2008.

Elin D. Miller,

Regional Administrator, Region 10.

- 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart N—Idaho

- 2. Section 52.670 is amended to read as follows:
 - a. In the table in paragraph (c):
 - i. By removing "[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)]" from the table heading.
 - ii. By removing the section heading "58.01.01—Rules for the Control of Air Pollution in Idaho" and adding in its place "Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho".
 - iii. By revising entries 600 through 603.
 - iv. By revising entries 606 through 610.
 - v. By revising entries 612 and 613.
 - vi. By revising entries 615 through 617.
 - vii. By adding in numerical order entries 618 through 623.
 - viii. By revising entry 625.
 - ix. By adding a section heading "State Statutes" and an entry for State Statutes "Section 1 of House Bill 557, codified at Idaho Code section 39–114" at the end of the table.
 - b. In paragraph (e) by adding an entry to the end of the table.

§ 52.670 Identification of plan.

* * * * *
(c) * * *

² "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. (2) All dependent Indian communities within the borders of the United States, whether within the original or subsequently

acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho,

Indian country includes, but is not limited to, all lands within the exterior boundaries of 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.

EPA-APPROVED IDAHO REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				
600	Rules for Control of Open Burning	4/2/08	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
601	Fire Permits, Hazardous Materials and Liability.	4/2/08	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
602	Nonpreemption of Other Jurisdictions	4/2/08	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
603	General Restrictions	4/2/08, 3/21/03, 5/1/94	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
606	Categories of Allowable Burning	4/2/08	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
607	Recreational and Warming Fires	3/21/03	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
608	Weed Control Fires	5/1/94	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
609	Training Fires	3/21/03	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
610	Industrial Flares	3/21/03	8/1/08 [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	8/1/08 [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	8/1/08 [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	8/1/08 [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	8/1/08 [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	4/2/08	8/1/08 [Insert page number where the document begins].	
618	Permit By Rule	4/2/08	8/1/08 [Insert page number where the document begins].	
619	Registration for Permit By Rule	4/2/08	8/1/08 [Insert page number where the document begins].	
620	Registration Fee	4/2/08	8/1/08 [Insert page number where the document begins].	
621	Burn Determination	4/2/08	8/1/08 [Insert page number where the document begins].	
622	General Provisions	4/2/08	8/1/08 [Insert page number where the document begins].	
623	Public Notification	4/2/08	8/1/08 [Insert page number where the document begins].	

EPA-APPROVED IDAHO REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
625	Visible Emissions	4/2/08	8/1/08 [Insert page number where the document begins].	
*	*	*	*	*

State Statutes

Section 1 of House Bill 557, codified at Idaho Code section 39-114.	Open Burning of Crop Residue	03/07/08	8/1/08 [Insert page number where the document begins].	
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EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES.

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
Open Burning of Crop Residue State Implementation Plan Revision.	State-wide	5/28/08	8/1/08 [Insert page number where the document begins].	

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 [FR Doc. E8-16973 Filed 7-31-08; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R02-OAR-2007-0553; FRL-8688-3]

Outer Continental Shelf Air Regulations Update To Include New York State Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (OCS) Air Regulations proposed in the **Federal Register** on March 14, 2008. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be promulgated into part 55 and updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the State of New York. The intended effect of approving the OCS

requirements for the State of New York is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: *Effective Date:* This rule is effective on September 2, 2008.

This incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 2, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2007-0553. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007; telephone number: (212) 637-4074; e-mail address: riva.steven@epa.gov.

SUPPLEMENTARY INFORMATION:

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 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Coordination With Indian Tribal Government
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 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
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 - J. Congressional Review Act
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I. Background Information

Throughout this document, the terms “we,” “us,” and “our” refer to the U.S. EPA.

On September 4, 1992, EPA promulgated 40 CFR part 55,¹ which established requirements to control air pollution from OCS sources in order to

¹ The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.