

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R10-OAR-2017-0566; FRL-9973-21—Region 10]

**Air Plan Approval; ID, Crop Residue Burning; Revision to Ozone Requirement****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the portions of Idaho's State Implementation Plan (SIP) related to agricultural crop residue burning. The Director of the Idaho Department of Environmental Quality (IDEQ) submitted the revisions to EPA on September 22, 2017. IDEQ supplemented the original submission with photochemical modeling analyses on October 23, 2017. The revisions change the ambient ozone concentration level at which IDEQ may approve a permittee's request to burn. EPA is proposing to approve the revisions because they satisfy the requirements of the Clean Air Act. This action is being taken under section 110 of the Clean Air Act (the Act or CAA).

**DATES:** Written comments must be received on or before February 21, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2017-0566, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Randall Ruddick, Air Planning Unit,

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**SUPPLEMENTARY INFORMATION:**

Throughout this document, wherever "we", "us" or "our" are used, it is intended to refer to the EPA.

**Table of Contents:**

- I. Background
  - A. Idaho's Crop Residue Burning Program
  - B. Idaho's Proposed SIP Revision
  - C. 2015 Ozone NAAQS Background
- II. EPA's Review of Idaho's Submittal
  - A. Summary of Idaho's Demonstration
  - B. Clean Air Act § 110(l) Requirements
- III. EPA's Proposed Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

**I. Background***A. Idaho's Crop Residue Burning Program*

Idaho's regulations at Idaho Administrative Procedures Act (IDAPA) 58.01.01.617 through 624 contain the federally-approved State Implementation Plan (SIP) provisions regulating open burning of crop residue in Idaho. These rules were approved by EPA on August 1, 2008, (73 FR 44915) and were submitted to EPA in response to 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). More information regarding the Ninth Circuit Court of Appeals decision and the federally-approved requirements for crop residue burning can be found in EPA's proposed and final actions on the state's 2008 SIP submittal. 73 FR 23155 (April 29, 2008) and 73 FR 44915 (August 1, 2008).

In 2013, EPA approved revisions related to Idaho's open burning and crop residue burning requirements that established a streamlined permitting process for spot burns, baled agricultural residue burns, and propane flaming. The revisions also made minor changes to the existing crop residue burning rules to update cross references and clarify certain administrative information. More information regarding the revisions EPA approved in 2013 can be found in EPA's proposed and final actions on the state's 2011 SIP submittal. 78 FR 2359 (January 11, 2013) and 78 FR 16790 (March 19, 2013).

Idaho's federally-approved crop residue burning rules at IDAPA 58.01.01.617 currently provide 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 the provisions at IDAPA 58.01.01.618 through 624. In brief, these rules require that 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 the IDEQ 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 dispose of crop residue through burning must abide by all of the general provisions in IDAPA 58.01.01.622 which covers such items as training requirements, reporting requirements, and certain limitations on burning.

The criteria according to which IDEQ may approve a request to burn crop residue are delineated in IDAPA 58.01.01.621. Importantly, the federally approved version currently in Idaho's SIP requires that IDEQ, before approving a permittee's request to burn, determine that ambient air quality levels do not exceed seventy-five percent of any NAAQS concentration level on the day when the burning will occur and are not projected to exceed such level over the next 24 hours. In addition, 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>1</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, IDEQ must also 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. See IDAPA 58.01.01.621.01. IDEQ must also notify the public as to whether a given day is a burn or no-burn day; the location and number of acres permitted to be burned; meteorological conditions and any real time ambient air quality monitoring data, and a toll-free number to receive request for information. IDAPA 58.01.01.623.

<sup>1</sup> The current one-hour action criteria under IDAPA 58.01.01.556 is an average of 80 µg/m<sup>3</sup> for PM<sub>2.5</sub> and an average of 385 µg/m<sup>3</sup> for PM<sub>10</sub>.

### B. Idaho's Proposed SIP Revision

On September 22, 2017, Idaho submitted a SIP revision request to EPA. This SIP submittal contains one change to the federally-approved crop residue burning rules. Specifically, the September 22, 2017, SIP submittal revises the ozone concentration level at which IDEQ may authorize (authorization level) agricultural crop residue burning (CRB) at IDAPA 58.01.01.621.01 and Idaho Code 39-114 (codification of Idaho Senate Bill 1009, Section 3) from seventy-five to ninety percent of the Ozone NAAQS. This revision does not change the authorization levels for any other NAAQS and all other CRB requirements remain unchanged.

IDEQ submitted this revision after concluding that an authorization level of seventy-five percent of the Ozone NAAQS was problematic because it prohibited IDEQ from allowing burning on what would otherwise be a desirable day to burn from a smoke management perspective—when smoke would rise well into the transport layer and disperse well. IDEQ asserts burning on days when smoke dispersion is better will further limit negative impacts on public health.

In the September 22, 2017, submittal, the IDEQ described the process for making the rule changes and noted that the changes were drafted in conjunction with negotiated rulemaking involving persons having an interest in the development of this rule. IDEQ's negotiated rulemaking process<sup>2</sup> did not result in a consensus regarding the SIP revisions Idaho submitted on September 22, 2017.

### C. 2015 Ozone NAAQS Background

On October 1, 2015, EPA signed a notice of final rulemaking that revised the 8-hour primary and secondary Ozone NAAQS (80 FR 65292; October 26, 2015). While both standards retain the same general form and averaging time (annual fourth-highest daily maximum 8-hour average concentration, averaged over three years<sup>3</sup>), they were lowered from 0.075 parts per million (ppm) to a level of 0.070 ppm.<sup>4</sup> The revised 2015 Ozone NAAQS provides greater protection of public health and the environment than the previous 2008 Ozone NAAQS.

<sup>2</sup> Idaho's negotiated rulemaking process is described in Section 67-5220, Idaho Code and IDAPA 04.11.01.810 through 819.

<sup>3</sup> See 80 FR 65296; October 26, 2015, for a detailed explanation of the calculation of the 3-year 8-hour average and 40 CFR part 50, Appendix U.

<sup>4</sup> These levels are commonly referred to in parts per billion (ppb): 75 ppb and 70 ppb, respectively.

Following promulgation of a new or revised NAAQS, EPA is required by section 107(d)(1) of the CAA to designate areas throughout the United States as attainment, nonattainment, or unclassifiable for the NAAQS. Nonattainment areas include both areas that are violating the NAAQS, and nearby areas with emissions sources or activities that contribute to violations in those areas. States with areas designated nonattainment are required to prepare and submit a plan for attaining the NAAQS in the area as expeditiously as practicable.

On November 6, 2017, EPA issued final designations for the 2015 Ozone NAAQS for most areas in the United States. Specifically, we found that Idaho meets the standard statewide and issued a final designation of "attainment/unclassifiable" for Idaho statewide. This final designation became effective January 16, 2018.

## II. EPA's Review of Idaho's Submittal

### A. Summary of Idaho's Demonstration

Idaho submitted a "Weight of Evidence" demonstration containing multiple analyses of ozone monitoring data; they also submitted photochemical modeling to demonstrate that the proposed SIP revision would not interfere with attainment of the 2015 Ozone NAAQS. (See Docket EPA-R10-OAR-2017-0566: 002 state submittals\_Weight of Evidence SIP narrative CRB03 crop residue burning ozone.pdf and 004 state submittals\_2017ACQ100 final CRB Ozone Modeling SIP amendment Report EPA submittal.pdf respectively.) Idaho's demonstration uses several different approaches to evaluate existing ozone monitoring data from 2011 through 2015 to attempt to quantify the impacts of crop residue burning during that period upon ambient ozone concentrations. Through this methodology, it attempts to demonstrate that the range of ambient impacts from historic crop residue burning have not exceeded levels that would be expected to cause a violation of the 2015 Ozone NAAQS. Idaho's demonstration further provides that the universe of sources participating in the crop residue burning program is stable and that ozone precursor emissions under the proposed revised SIP will not increase even though there is no provision in the SIP which explicitly limits the scope of CRB either in terms of a limit on acres burned or emissions generated by the practice. Finally, Idaho supplemented its "Weight of Evidence" demonstration with a photochemical modeling demonstration that evaluated whether increasing the SIP's CRB authorization

level to ninety percent of the Ozone NAAQS concentration would result in a violation of the NAAQS and concluded that Idaho would continue to attain the Ozone NAAQS at this higher authorization level. EPA's analysis of Idaho's demonstration is included in our Technical Support Document (Docket R10-OAR-2017-0566, 101 Technical Support Document ID 2017 CRB Ozone Revision.pdf) and elsewhere in this Notice.

### B. Clean Air Act § 110(l) Requirements

Approvals to revisions of SIPs are subject to the requirements of CAA § 110(l). Under section 110(l), the Administrator may not approve a SIP revision "if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement of [the Act]."

We considered all of the NAAQS pollutants and determined the most relevant pollutants for this evaluation are PM<sub>2.5</sub>, PM<sub>10</sub>, and ozone. PM and ozone are relevant because the EPA's recent review of the NAAQS for these pollutants resulted in more stringent standards (78 FR 3085, January 15, 2013; and 80 FR 65292; October 26, 2015). There are no nonattainment areas for carbon monoxide, sulfur dioxide, nitrogen dioxide or lead. AQS data show the levels for these pollutants are well below the standards.

Idaho's CRB ozone authorization level SIP revision does not affect a change in Idaho's Regional Haze SIP (approved November 8, 2012, 77 FR 66929) because it does not change or impose a limit on the quantity of light impairing pollutants emitted from crop residue burning. Idaho's 5-Year Progress Report, submitted June 28, 2016, demonstrates visibility improvement at all three of the Class I area monitoring sites, Craters of the Moon National Monument, Sawtooth Wilderness, and Selway-Bitterroot Wilderness. Current regional haze plan strategies are sufficient for Idaho and its neighboring states to meet their reasonable progress goals.

Our findings in the 2008 approval (73 FR 23155, April 29, 2008) that CRB was not the cause of PM nonattainment issues are still valid. The same reasoning applies to the West Silver Valley nonattainment area as well. Residential wood combustion in the cold, winter months during atmospheric inversions is most responsible for elevated particulate matter in these areas. Prescribed burning in the late autumn and early spring also contributes substantially. The CRB authorization level and control measures specific to PM<sub>2.5</sub> and PM<sub>10</sub> are

not changing under this proposed SIP revision. The revision will not interfere in attainment or reasonable further progress or any other applicable requirement with respect to either PM NAAQS.

To address 110(l) requirement for ozone, we reviewed Idaho's "Weight of Evidence" demonstration submitted September 22, 2017, and their supplemental modeling analyses submitted October 23, 2017. Based on our review of Idaho's modeling and monitor data analyses we conclude that the proposed revision to Idaho's CRB ozone authorization level will not interfere with attainment or reasonable further progress with the 2015 Ozone NAAQS or any other applicable CAA requirement.

Section 107(d)(1)(A)(i) of the CAA defines a "nonattainment area" as "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant." If an area meets either prong of this definition, then the EPA is obligated to designate the area as "nonattainment." There are no areas designated as nonattainment for ozone in the state of Idaho (82 FR 54232, November 16, 2017), in part, because we do not believe Idaho is contributing to violations of the 2015 Ozone NAAQS in other states.

### III. EPA's Proposed Action

We have reviewed Idaho's demonstration that revising the CRB ozone authorization level from seventy-five percent to ninety percent of the Ozone NAAQS is still protective of the NAAQS, will not result in an increase of emissions, and will not interfere with attainment of the 2015 Ozone NAAQS. We believe Idaho adequately justified its conclusions with respect to each of these. EPA's approval decision is based primarily on the photochemical modeling with secondary reliance on the weight of evidence demonstration put forth by Idaho. See Docket R10-OAR-2017-0566, *101 Technical Support Document ID 2017 CRB Ozone Revision.pdf* for details on our review of the state submittal. Based on the information provided by Idaho, as discussed in our Technical Support Document, we propose to approve Idaho's SIP revision and amend the authorization level for CRB to 90% of the Ozone NAAQS. Authorization levels

for CRB in Idaho's SIP will remain at 75% for all other NAAQS.

Under CAA section 110(k), EPA is proposing to approve revisions to Idaho's SIP requested in their September 22, 2017, SIP submittal. Moreover, based on the factors discussed above, we also conclude that approval of the SIP submittal will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Clean Air Act.

### IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Idaho regulations for Burn Approval Criteria at IDAPA 58.01.01.621.01 and Idaho Code 39-114, State Effective February 28, 2018, discussed in Section I.B. of the preamble. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 10 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

### 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 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

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

Dated: January 11, 2018.

**Chris Hladick,**

*Regional Administrator, EPA Region 10.*

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