

should contact legal counsel for the member of the news media. Staff should contact a member of the news media directly only if the member is not represented by legal counsel. The purpose of this contact is to explore whether the member may have information essential to the investigation, and to determine the interests of the media with respect to the information. If the nature of the investigation permits, the staff should make clear what its needs are as well as its willingness to respond to particular problems of the media. The staff should consult with the Commission's Office of Public Affairs, as appropriate.

(d) The staff should negotiate with news media members or their counsel, consistently with this Policy Statement, to obtain the essential information through informal channels, avoiding the issuance of a subpoena, if the responsible Regional Director, District Administrator, or Associate Director determines that such negotiations would not substantially impair the integrity of the investigation. Depending on the circumstances of the investigation, informal channels may include voluntary production, informal interviews, or written summaries.

(e) If negotiations are not successful in achieving a resolution that accommodates the Commission's interest in the information and the media's interests without issuing a subpoena, the staff investigating the matter should then consider whether to seek the issuance of a subpoena for the information. The following principles should guide the determination of whether a subpoena to a member of the news media should be issued:

(1) There should be reasonable grounds to believe that the information sought is essential to successful completion of the investigation. The subpoena should not be used to obtain peripheral or nonessential information.

(2) The staff should have exhausted all reasonable alternative means of obtaining the information from non-media sources. Whether all reasonable efforts have been made to obtain the information from alternative sources will depend on the particular circumstances of the investigation, including whether there is an immediate need to preserve assets or protect investors from an ongoing fraud.

(f) If there are reasonable grounds to believe the information sought is essential to the investigation, all reasonable alternative means of obtaining it have been exhausted, and all efforts at negotiation have failed, then the staff investigating the matter shall seek authorization for the

subpoena from the Director of the Division of Enforcement. No subpoena shall be issued unless the Director, in consultation with the General Counsel, has authorized its issuance.

(g) In the event the Director of the Division of Enforcement, after consultation with the General Counsel, authorizes the issuance of a subpoena, notice shall immediately be provided to the Chairman of the Commission.

(h) Counsel (or the member of the news media, if not represented by counsel) shall be given reasonable and timely notice of the determination of the Director of the Division of Enforcement to authorize the subpoena and the Director's intention to issue it.

(i) Subpoenas should be negotiated with counsel for the member of the news media to narrowly tailor the request for only essential information. In negotiations with counsel, the staff should attempt to accommodate the interests of the Commission in the information with the interests of the media.

(j) Subpoenas should, wherever possible, be directed at material information regarding a limited subject matter, should cover a reasonably limited period of time, and should avoid requiring production of a large volume of unpublished material. They should give reasonable and timely notice of their demand for documents.

(k) In the absence of special circumstances, subpoenas to members of the news media should be limited to the verification of published information and to surrounding circumstances relating to the accuracy of published information.

(l) Because the intent of this policy statement is to protect freedom of the press, news gathering functions, and news media sources, this policy statement does not apply to demands for purely commercial or financial information unrelated to the news gathering function.

(m) Failure to follow this policy may constitute grounds for appropriate disciplinary action. The principles set forth in this statement are not intended to create or recognize any legally enforceable rights in any person.

By the Commission.

Dated: April 12, 2006.

**Nancy M. Morris,**  
Secretary.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 272

[FRL-8055-7]

#### Idaho: Incorporation by Reference of Approved State Hazardous Waste Management Program

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

**ACTION:** Final rule.

**SUMMARY:** The Resource Conservation and Recovery Act, as amended (RCRA), allows EPA to authorize State hazardous waste management programs if EPA finds that such programs are equivalent and consistent with the Federal program and provide adequate enforcement of compliance. Title 40 of the Code of Federal Regulations (CFR) Part 272 is used by EPA to codify its decision to authorize individual State programs and incorporates by reference those provisions of the State statutes and regulations that are subject to EPA's inspection and enforcement authorities as authorized provisions of the State's program. This final rule revises the codification of the Idaho authorized program.

**DATES:** This final rule is effective on April 20, 2006. The incorporation by reference of authorized provisions in the Idaho statutes and regulations contained in this rule is approved by the Director of the Federal Register as of April 20, 2006 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R10-RCRA-2005-0465. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., 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 through <http://www.regulations.gov> or in hard copy by contacting Jeff Hunt, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop AWT-122, Seattle, WA 98101, e-mail: [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov), phone number (206) 553-0256.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop AWT-122, Seattle, WA 98101, e-mail: [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov), phone number (206) 553-0256.

**SUPPLEMENTARY INFORMATION:**

## I. Incorporation By Reference

### A. What Is Codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR Part 272 and incorporates by reference State statutes and regulations that make up the approved program which is Federally enforceable. EPA retains the authority to exercise its inspection and enforcement authorities in accordance with Sections 3007, 3008, 3013 and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

Today's action codifies EPA's authorization of revisions to Idaho's hazardous waste management program. This codification reflects the State program in effect at the time EPA authorized revisions to the Idaho hazardous waste management program in a final rule dated July 22, 2005 (70 FR 42273). Notice and an opportunity for comment regarding the revisions to the authorized State program were provided to the public at the time those revisions were proposed.

### B. What Is the History of the Authorization and Codification of Idaho's Hazardous Waste Management Program?

Idaho initially received final authorization for its hazardous waste management program, effective April 9, 1990 (55 FR 11015). Subsequently, EPA authorized revisions to the State's program effective June 5, 1992 (57 FR 11580), August 10, 1992 (57 FR 24757), June 11, 1995 (60 FR 18549), January 19, 1999 (63 FR 56086), July 1, 2002 (67 FR 44069), March 10, 2004 (69 FR 11322), and July 22, 2005 (70 FR 42273). EPA first codified Idaho's authorized hazardous waste program effective February 4, 1991 (55 FR 50327), and updated the codification of Idaho's program on June 5, 1992 (57 FR 11580),

August 10, 1992 (57 FR 24757), August 24, 1999 (64 FR 34133), and March 8, 2005 (70 FR 11132). In this action, EPA is finalizing the revision of Subpart N of 40 CFR Part 272, to include the most recent authorization revision effective July 22, 2005 (70 FR 42273).

### C. What Decisions Have We Made in This Action?

In a **Federal Register** notice published December 19, 2005 (70 FR 75098), EPA sought public comment on the proposal to codify EPA's authorization of revisions to Idaho's hazardous waste management program. The comment period for this proposed rule ended January 18, 2006, and EPA received no comments. Therefore, today's action codifies Idaho's hazardous waste management program as proposed.

EPA is incorporating by reference the authorized revisions to the Idaho hazardous waste program by revising subpart N of 40 CFR part 272. 40 CFR part 272, Subpart N, § 272.651 previously incorporated by reference Idaho's authorized hazardous waste program, as amended, through 2004. Section 272.651 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, Section 272.651 references the Memorandum of Agreement, the Attorney General's Statement and the Program Description which were evaluated as part of the approval process of the hazardous waste management program in accordance with Subtitle C of RCRA.

### D. What Is the Effect of Idaho's Codification on Enforcement?

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and any other applicable statutory and regulatory provisions, to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogues to these provisions. Therefore, the EPA is not incorporating by reference Idaho's inspection and enforcement authorities nor are those authorities part of Idaho's approved State program which operates in lieu of the Federal program. 40 CFR 272.651(b)(2) lists these authorities for informational purposes, and also because EPA considered them in determining the adequacy of Idaho's

enforcement authorities. This action revises this listing for informational purposes where these authorities have changed under Idaho's revisions to State law and were considered by EPA in determining the adequacy of Idaho's enforcement authorities. Idaho's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

### E. What State Provisions Are Not Part of the Codification?

Some provisions of Idaho's hazardous waste management program are not part of the federally authorized State program. These non-authorized provisions include:

- (1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));
- (2) Federal rules for which Idaho is not authorized, but which have been incorporated into the State regulations because of the way the State adopted federal regulations by reference;
- (3) State procedural and enforcement authorities which are necessary to establish the ability of the program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are "broader in scope" than the federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.651(b)(3) currently lists the Idaho regulatory provisions which are "broader in scope" than the federal program and which are not part of the authorized program being incorporated by reference. This action updates that list for "broader in scope" provisions EPA identified in recent authorization actions for revisions to the State program. While "broader in scope" provisions are not part of the authorized program and cannot be enforced by EPA, the State may enforce such provisions under State law.

### F. What Will Be the Effect of Codification on Federal HSWA Requirements?

With respect to any requirement(s) pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The Codification does not affect Federal HSWA requirements for which

the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

## II. Statutory and Executive Order Reviews

This rule codifies revisions to Idaho's authorized hazardous waste program and imposes no requirements other than those currently imposed by State law. This rule complies with applicable executive orders and statutory provisions as follows:

### 1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### 2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, because this final rule does not establish or modify any information or recordkeeping requirements for the regulated community and only codifies the pre-existing requirements under State law authorized by EPA and imposes no additional requirements beyond those imposed by State law.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

### 3. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601, *et seq.*, generally requires federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administrations' Size Regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small

organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant economic impact on small entities because the final rule will only have the effect of codifying the authorized pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. After considering the economic impacts of today's rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### 4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal

governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, today's rule is not subject to the requirements of sections 202 and 203 of the UMRA.

#### 5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government." This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This rule addresses the codification of authorized pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

#### 6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### 7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

#### 8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

#### 9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve "technical standards" as defined by the NTTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### 10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs,

policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this rule addresses codifying pre-existing State rules authorized by EPA and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

#### 11. Congressional Review Act

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. EPA will submit a report containing this rule 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). This rule will be effective on April 20, 2006.

#### List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 23, 2006.

**Ronald A. Kreizenbeck,**  
Deputy Regional Administrator, Region 10.

■ For the reasons set forth in the preamble, EPA amends 40 CFR part 272 as follows:

#### PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

**Authority:** Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended

by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Subpart N is amended by revising § 272.651 to read as follows:

**§ 272.651 Idaho State-Administered Program: Final Authorization.**

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Idaho has final authorization for the following elements as submitted to EPA in Idaho's base program application for final authorization which was approved by EPA effective on April 9, 1990.

Subsequent program revision applications were approved effective on June 5, 1992, August 10, 1992, June 11, 1995, January 19, 1999, July 1, 2002, March 10, 2004, and July 22, 2005.

(b) The State of Idaho has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) State Statutes and Regulations.

(1) The Idaho statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA-Approved Idaho Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program, July 2005.

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39-4404; 39-4405 (except 39-4405(8)); 39-4406; 39-4407; 39-4408(4); 39-4409(2) (except first sentence); 39-4409(3); 39-4409(4) (first sentence); 39-4410; 39-4411(1); 39-4411(3); 39-4411(6); 39-4412 through 39-4416; 39-4418; 39-4419; 39-4421; 39-4422; and 39-4423(3) (a) & (b).

(ii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law

Publishers: sections 39-5804; 39-5809; 39-5810; 39-5813(2); 39-5814; 39-5816; 39-5817; and 39-5818(1).

(iii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Volume 2, Title 9, Chapter 3, "Public Writings", published in 1990 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9-337(10); 9-337(11); 9-338; 9-339; and 9-344(2).

(iv) 2002 Cumulative Pocket Supplement to the Idaho Code (I.C.), Volume 2, Title 9, Chapter 3, "Public Writing", published in 2002 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9-340A, 9-340B, and 9-343.

(v) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2004: sections 58.01.05.000; 58.01.05.356.02 through 58.01.05.356.05; 58.01.05.800; 58.01.05.850; 58.01.05.996; 58.01.05.997; and 58.01.05.999.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference, and are not federally enforceable:

(i) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39-4403(6) & (14); 39-4427; 39-4428 and 39-4429.

(ii) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Siting Act", published in 2002 by the Michie Company, Law Publishers: section 39-5813(3).

(iii) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2004: sections 58.01.05.355; and 58.01.05.500.

(4) Memorandum of Agreement. The Memorandum of Agreement between EPA Region 10 and the State of Idaho (IDEQ), signed by the EPA Regional Administrator on August 1, 2001, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(5) Statement of Legal Authority. The "Attorney General's Statement for Final Authorization," signed by the Attorney General of Idaho on July 5, 1988 and revisions, supplements and addenda to

that Statement, dated July 3, 1989, February 13, 1992, December 29, 1994, September 16, 1996, October 3, 1997, April 6, 2001, September 11, 2002, and September 22, 2004, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(6) Program Description. The Program Description, and any other materials submitted as part of the original application or as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Idaho" to read as follows:

**Appendix A to Part 272—State Requirements**

\* \* \* \* \*

**Idaho**

(a) The statutory provisions include:

Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", 2002: sections 39-4402; 39-4403 (except 39-4403(6) & (14)); 39-4408(1)-(3); 39-4409(1) (except fourth and fifth sentences); 39-4409(2) (first sentence); 39-4409(4) (except first sentence); 39-4409(5); 39-4409(6); 39-4409(7); 39-4409(8); 39-4411(2); 39-4411(4); 39-4411(5); 39-4423 (except 39-4423(3) (a) & (b)); and 39-4424.

Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39-5802; 39-5803; 39-5808; 39-5811; 39-5813(1); and 39-5818(2).

Copies of the Idaho statutes that are incorporated by reference are available from Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, VA 22906-7587.

(b) The regulatory provisions include:

Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published on July 2004: sections 58.01.05.001; 58.01.05.002; 58.01.05.003; 58.01.05.004; 58.01.05.005; 58.01.05.006; 58.01.05.007; 58.01.05.008; 58.01.05.009; 58.01.05.010; 58.01.05.011; 58.01.05.012; 58.01.05.013; 58.01.05.014; 58.01.05.015;

58.01.05.016; 58.01.05.356.01; and  
58.01.05.998.

\* \* \* \* \*

[FR Doc. 06-3354 Filed 4-19-06; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 050722198-6084-02; I.D. 071805B]

RIN 0648-AS93

#### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend regulations supporting the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to revise requirements facilitating observer data transmission, improve support for observers, and provide consistency with current regulations. The final rule will promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs).

**DATES:** Effective on May 22, 2006.

**ADDRESSES:** Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Records Officer, and the Alaska Region, NMFS, website at [www.fakr.noaa.gov](http://www.fakr.noaa.gov).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Alaska Region, and by email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Jason Anderson, 907-586-7228, or [jason.anderson@noaa.gov](mailto:jason.anderson@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian

Islands Management Area (BSAI) and Gulf of Alaska (GOA) in the Exclusive Economic Zone under the FMPs. The North Pacific Fishery Management Council (Council) has prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted and NMFS approved and implemented the current "interim" Observer Program (Observer Program) in 1996 (61 FR 56425, November 1, 1996). The Observer Program was extended on four occasions: through 1998 (62 FR 67755, December 30, 1997), through 2000 (63 FR 69024, December 15, 1998), through 2002 (65 FR 80381, December 21, 2000), and through 2007 (67 FR 72595, December 6, 2002). The Observer Program develops regulations for the collection of information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Regulations implementing the Observer Program at § 679.50 require observer coverage aboard catcher vessels, catcher/processors, motherships, and shoreside and stationary floating processors that participate in the groundfish fisheries off Alaska and establish vessel, processor, and observer provider responsibilities relating to the Observer Program.

Timely electronic communication between the fishing industry and NMFS of catch reports submitted to NMFS by industry and observers is crucial to the effective in-season monitoring of groundfish quotas and protected species catch allowances. In July 1995, NMFS issued a final rule that required all catcher/processors, motherships, and shoreside processors that process groundfish to have computer hardware and software that would enable observers to send electronic data to NMFS (60 FR 34904, July 5, 1995). In October 2003, a final rule was published (68 FR 58038, October 8, 2003) that extended the requirements to all catcher vessels that are required to carry an observer whenever fishing.

Regulations describing hardware and software requirements for electronic submission of observer reports are found at § 679.50(g)(1) and (g)(2). This electronic data submission and communications system is called the observer communications system (OCS, previously referred to as "ATLAS"). This system consists of computers and communications equipment supplied by catcher vessels, catcher/processors,

motherships, and shoreside or stationary floating processors, and custom software provided by NMFS. The OCS system allows observers to rapidly process and report the data they collect to NMFS. Its use on catcher vessels, catcher/processors, motherships, and shoreside or stationary floating processors has led to more timely and accurate fisheries data.

The proposed rule for this action was published in the **Federal Register** on August 8, 2005 (70 FR 45638), with comments invited through September 7, 2005. NMFS received three letters of comment that contained five separate comments. Comments are summarized and responded to under Response to Comments, below.

#### Revisions to OCS Regulations

Observer Program staff periodically upgrade the software component of the OCS. Upgraded OCS software improves overall data quality. This action amends regulations that require catcher vessels, catcher/processors, motherships, and shoreside or stationary floating processors carrying OCS equipment to install hardware upgrades to meet current technology standards necessary to support OCS software and facilitate its installation. Presently, regulations at § 679.50(g)(1)(iii)(B)(1) and (g)(2)(iii)(B)(1) require a minimum of a Windows 9x or NT compatible operating system, both of which are older, now unsupported operating systems. This action amends regulations at § 679.50(g)(1)(iii)(B)(1) and (g)(2)(iii)(B)(1) to require a Windows 98 or more recent operating system such as Windows 2000, Millennium, or XP. NMFS believes Windows based operating systems are acceptable because the upgraded software component is only compatible with Windows based operating systems. The regulations also are revised to require catcher vessels, catcher/processors, motherships, and shoreside or stationary floating processors to provide for observers a personal computer with a functioning compact disc (CD) drive. Additionally, personal computers must have a minimum random access memory (RAM) of 256 megabytes.

Personal computers must operate the larger, more sophisticated software and database programs provided by NMFS. The new NMFS software requires an upgraded operating system to function. The software now is stored on a CD medium, which facilitates easier and efficient installation. Windows 95 is no longer supported by the manufacturer, so newer Windows versions are necessary.