

4, "PM-10 Non-attainment Area Rules; Dustproofing and Stabilization for Commercial Unpaved Parking, Drive and Working Yards"; Section 4-4-100, "General Provisions," amended on June 3, 2009; Section 4-4-110, "Definitions," amended on June 3, 2009; Section 4-4-120, "Objective Standards," amended on June 3, 2009; Section 4-4-130, "Work Practice Standards," adopted on June 3, 2009; Section 4-4-140, "Recordkeeping and Records Retention," adopted on June 3, 2009. Chapter 4, Article 5, "PM-10 Non-attainment Area Rules; Stabilization for Residential Parking and Drives"; Section 4-5-150, "Stabilization for Residential Parking and Drives; Applicability," amended on June 3, 2009; Section 4-5-160, "Residential Parking Control Requirement," amended on June 3, 2009; Section 4-5-170, "Deferred enforcement date," amended on June 3, 2009. Chapter 4, Article 7, "Construction Sites in Non-Attainment Areas—Fugitive Dust"; Section 4-7-210, "Definitions," adopted on June 3, 2009; Section 4-7-214, "General Provisions," adopted on June 3, 2009; Section 4-7-218, "Applicability; Development Activity," adopted on June 3, 2009; Section 4-7-222, "Owner and/or Operator Liability," adopted on June 3, 2009; Section 4-7-226, "Objective Standards; Sites," adopted on June 3, 2009; Section 4-7-230, "Obligatory Work Practice Standards; Sites," adopted on June 3, 2009; Section 4-7-234, "Nonattainment-Area Dust Permit Program; General Provisions," adopted on June 3, 2009; Section 4-7-238, "Nonattainment Area Site Permits," adopted on June 3, 2009; Section 4-7-242, "Nonattainment Area Block Permits," adopted on June 3, 2009; Section 4-7-246, "Recordkeeping and Records Retention," adopted on June 3, 2009. Chapter 4, Article 9, "Test Methods"; Section 4-9-320, "Test Methods for Stabilization For Unpaved Roads and Unpaved Parking Lots," adopted on June 3, 2009; Section 4-9-340, "Visual Opacity Test Methods," adopted on June 3, 2009.

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BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 272

[EPA-R10-RCRA-2009-0868; FRL-9122-8]

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

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

**ACTION:** Direct final rule.

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

**DATES:** This rule is effective June 7, 2010, unless the EPA receives adverse comment on this regulation by the close of business May 6, 2010. If the EPA receives such comments, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect. The Director of the Federal Register approves this incorporation by reference as of June 7, 2010 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-RCRA-2009-0868 by one of the following methods:

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

- *E-mail:* [hedgpeth.zach@epa.gov](mailto:hedgpeth.zach@epa.gov).

- *Mail:* Zach Hedgpeth, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT-122, Seattle, Washington 98101.

- *Hand Delivery:* Zach Hedgpeth, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT-122, Seattle, Washington 98101. Such deliveries are only accepted during the normal business hours of operation; special

arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R10-RCRA-2009-0868. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101. This Docket Facility is open from 9 a.m. to noon, and 1 to 4 p.m. Monday through Friday, excluding legal holidays. The library telephone number is 206-553-1289.

**FOR FURTHER INFORMATION CONTACT:** Zach Hedgpeth, U.S. EPA, Region 10,

1200 Sixth Avenue, Mail stop WCM-122, Seattle, Washington 98101, e-mail: [hedgpeth.zach@epa.gov](mailto:hedgpeth.zach@epa.gov), phone number (206) 553-1217.

#### 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, 42 U.S.C. 6926(b), allows the Environmental Protection Agency 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 independent enforcement authority pursuant to 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.

This action codifies EPA's authorization of revisions to Idaho's hazardous waste management program. This direct final action codifies the State program in effect at the time EPA authorized revisions to the Idaho hazardous waste management program in a final rule dated December 23, 2008 (73 FR 78647). Notice and an opportunity for comment regarding those revisions to the authorized State program were provided to the public at the time those revisions were proposed. EPA is not reopening its decision to authorize changes to the State's program nor is EPA requesting comment on those revisions.

#### 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), July 22, 2005 (70 FR 42273), February 26, 2007 (72 FR 8283) and December 23, 2008 (73 FR 78647). 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), March 8, 2005 (70 FR 11132) and April 20, 2006 (71 FR 20341). In this action, EPA is revising subpart N of 40 CFR part 272, to include the most recent authorization revision effective December 23, 2008 (73 FR 78647).

#### C. What Codification Decisions Have We Made in This Rule?

This action incorporates by reference the authorized revisions to the Idaho hazardous waste program by revising subpart N of 40 CFR part 272. 40 CFR 272.651, previously incorporated by reference Idaho's authorized hazardous waste program, as amended, through 2005. Section 272.651 also referenced 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 referenced 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. This action updates those demonstrations 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, as well as the Memorandum of Agreement, the Attorney General's Statement and the Program Description, all of which were evaluated as part of the approval process for the program revision effective on December 23, 2008.

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

EPA retains its independent enforcement authority under statutory provisions, including but not limited to, sections 3007, 3008, 3013 and 7003 of RCRA, 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. EPA lists Idaho's authorities for informational purposes, and 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 Proposed as Part of the Codification?

The public is reminded that 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) 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 the recent authorization of the revision 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 the Proposed 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.

This Codification does not effect 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 Rules 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 direct final action codifies revisions to the EPA-authorized hazardous waste management program in Idaho pursuant to RCRA section 3006 and imposes no requirements other than those imposed by State law. This action complies with applicable executive orders and statutory provisions as follows:

### 1. Executive Order 12866

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

### 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.* Burden is defined at 5 CFR 1320.3(b). This direct final rule does not establish or modify any information or recordkeeping requirements for the regulated community. EPA has determined that it

is not subject to the provisions of the Paperwork Reduction Act.

### 3. Regulatory Flexibility Act

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 this direct final rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (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 direct final action will not have a significant impact on small entities because the action will only have the effect of codifying pre-existing authorized requirements under State law. After considering the economic impacts of this action, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### 4. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or Tribal governments or the private sector. This action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, EPA has determined that the requirements of section 203 of the UMRA do not apply to this action.

### 5. Executive Order 13132: Federalism

This action 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 the various levels of government, as specified in Executive Order 13132. This action addresses the codification of the authorized State hazardous waste program in Idaho. Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with officials of the State of Idaho, Department of Environmental Quality in developing this action.

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

This action does not have Tribal implications, as specified in Executive Order 13175. This action addresses the codification of the authorized State hazardous waste program in Idaho. Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR. Thus, EPA has determined that Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it codifies an approved State program into the Code of Federal Regulations (CFR). Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR.

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

This action is not subject to Executive Order 13211 (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. EPA has determined that this action 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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action addresses codifying a revision of the authorized hazardous waste program in the State of Idaho. EPA has determined that the action is not subject to Executive Order 12898.

#### 11. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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 document 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 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 action will be effective June 7, 2010.

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

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, 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 and Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 11, 2010.

**Dennis J. McLerran,**

*Regional Administrator, EPA 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, July 22, 2005, February 26, 2007 and December 23, 2008.

(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) 2010 Codification of EPA-Approved Idaho Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program, December 2008.

(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 2008: 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); 39-4428 and 39-4429.

(ii) 2004 Cumulative Pocket Supplement to the Idaho Code (I.C.), Volume 39, Title 44, "Hazardous Waste Management", published in 2004 by the Michie Company, Law Publishers, Charlottesville, Virginia: section 39-4427.

(iii) 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).

(iv) 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 2008: 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, September 22, 2004, June 13, 2006, September 29, 2006 and June 23, 2008, 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 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) (only the 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 2008: 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; 58.01.05.018; 58.01.05.356.01; and 58.01.05.998.

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[FR Doc. 2010-7647 Filed 4-5-10; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 286

#### RIN 0970-AC40

### Temporary Assistance for Needy Families (TANF) Carry-Over Funds

**AGENCY:** Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the statutory change to section 404(e) of the Social Security Act as enacted by the American Recovery and Reinvestment Act of 2009. This change allows States, Tribes and Territories to use Temporary Assistance for Needy Families (TANF) program funds carried over from a prior year for any allowable TANF benefit, service or activity. Previously these funds could be used only to provide assistance. This final rule applies to States, local

governments, and Tribes that administer the TANF program.

**DATES:** Effective April 6, 2010, the interim final rule amending 45 CFR part 286 which was published at 74 FR 25161 on May 27, 2009, is adopted as a final rule without change.

**FOR FURTHER INFORMATION CONTACT:** Robert Shelbourne, Director, Division of State TANF Policy and Acting Director, Division of Tribal TANF Management, Office of Family Assistance, ACF, at (202) 401-5150.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory Authority

Section 417 of the Social Security Act (42 U.S.C. 617) limits the authority of the Federal government to regulate State conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided. We have interpreted this provision to allow us to regulate where Congress has charged HHS with enforcing certain TANF provisions by assessing penalties. Because the improper use of Federal TANF carry-over funds can result in a financial penalty pursuant to 42 U.S.C. 609(a)(1), we have the authority to regulate in this instance.

##### II. American Recovery and Reinvestment Act of 2009

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), which included a provision to lift the restriction on unspent Federal TANF funds reserved or "carried over" into a succeeding fiscal year. Prior to Public Law 111-5, carry-over funds could only be used to provide assistance (*i.e.*, ongoing basic needs payments, and supportive services such as transportation and child care to families who are not employed). Section 2103 of Division B of Public Law 111-5 amends section 404(e) of the Social Security Act (Act) by allowing States, District of Columbia, the Territories and Tribes to use the carry-over funds for any allowable TANF benefit, service, or activity (such as job skills training or re-training activities, employment counseling services, parental counseling services, teen pregnancy prevention activities, services for victims of domestic violence, after-school programs)—and not just assistance.

##### III. Response to Public Comment and Regulatory Provisions

The interim final rule was published May 27, 2009, and provided a 60-day comment period. Only one comment was received from an advocacy organization that simply expressed