



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2021-0752; FRL-9203-01-R10]

Air Plan Approval; WA; Yakima County Outdoor and Agricultural Burning Rule

Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve into the Washington State Implementation Plan (SIP) the Yakima Regional Clean Air Agency's (YRCAA) revised outdoor and agricultural burning rule submitted by the State of Washington (Washington or the State) on October 14, 2021. The submitted revisions improve stringency, clarity and enforceability of the rule. The EPA is proposing to approve the SIP submission as consistent with Clean Air Act (Act or CAA) requirements.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2021-0752, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which 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. The 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, (206) 553-6121, vauepl.claudia@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

I. Background for this Action

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). These ambient standards address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA-approved SIP provisions and control strategies are federally enforceable. States revise the SIP as needed and submit revisions to the EPA for review and approval.

The EPA approved YRCAA’s outdoor burning rules into the Washington SIP in 1998 as part of the Yakima area attainment plan for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀)¹ On October 14, 2021, Washington submitted a SIP revision to the EPA that repeals and replaces the 1998 SIP-approved outdoor burning rules for the Yakima area.

II. The State’s Submission

Washington’s October 14, 2021, SIP submission significantly revised the SIP-approved outdoor burning rules for the Yakima area. Specifically, the SIP revision repeals and replaces the following rules from *Regulation 1 of the Yakima Regional Clean Air Agency, Article 5*, that were federally approved into the Washington SIP in 1998: *5.01 Outdoor Burning; 5.02 Regulations*

¹ We note that the Yakima area has since been redesignated to attainment for PM₁₀. (See 70 FR 6591, February 8, 2005).

Applicable to All Outdoor Burning; 5.03 Regulations Applicable to All Outdoor Burning within the Jurisdiction of the Yakima County Clean Air Authority, Local Cities, Towns, Fire Protection Districts and Conservation Districts; 5.04 Regulations Applicable to Permits Issued by the Yakima County Clean Air Authority for All Other Outdoor Burning; and 5.05 Additional Restrictions on Outdoor Burning. The SIP revision replaces the repealed outdoor burning rules in *Regulation 1, Article 5*, with *Regulation 1, Article 3, 3.03 Outdoor and Agricultural Burning*, that was adopted by YRCAA on October 8, 2020 and became state effective on November 9, 2020.

III. The EPA's Evaluation

As mentioned previously, the October 2021 SIP submission replaces the outdoor burning rules in *Regulation 1, Article 5*, with outdoor and agricultural burning rules in *Regulation 1, Article 3, Section 3.03*. The revision includes renumbering as well as updates to the rules.

Applicability

The revised rules continue to apply within YRCAA's jurisdiction. *Section 3.03* of the revised rules applies to burning requiring a permit and to burning that is exempt from permitting. *Section 3.03* also applies to agricultural burning at agricultural operations and government operations, and to certain firefighting training fires. Consistent with the current SIP-approved rules, the revised rules do not apply to silvicultural burning and contain clarification that silvicultural burning is regulated by chapter 70A.15.RCW, chapter 332-24 WAC, and the Department of Natural Resources Washington State Smoke Management Plan (3.03.B). The revised rules also contain exemptions for certain fire training fires at enclosed fire training facilities that meet specific rule requirements. Overall, the scope and applicability of outdoor burning subject to the revised rules appears at least equivalent to, if not more stringent than, the current SIP-approved rules.

General Prohibitions and Requirements for All Burning

Under the revised rules, residential and land clearing burning is prohibited at all times in

the 10 urban growth areas (UGAs) in Yakima County (3.03.C). In contrast, the SIP-approved rules prohibit open burning in all UGAs and in cities with populations greater than 10,000, but only when the NAAQS are threatened, and alternative disposal practices are not reasonably available. Both the SIP-approved rules and the revised rules prohibit burning during a burn ban, however, to improve compliance and enforcement of this prohibition, the revised rules require confirmation of daily burning status (3.03.C.1.b and 3.03.C.2.a). The revised rules improve enforceability by including a clear requirement to extinguish fires when burning is prohibited. Specifically, in addition to the requirement that there be no visible flame, the revised rules add that no visible smoke must come from the fire and that the material being burned can be handled with bare hands. The revised rules also shorten the maximum time allowed for larger fires to be extinguished by 2 hours, from 10 to 8 hours (3.03.C.2.e).

Furthermore, the revised rules establish that land clearing, storm and flood debris, and orchard removal burns shall be extinguished within 8 hours of notification of a burn ban and that all other burns shall be extinguished within 3 hours of the notification (3.03.C.2.e). The revised rules also define storm and flood debris burning as “natural vegetation proposed for burning that was deposited by a storm or flood from a declared emergency by a governmental authority” and establish that storm and flood debris can only be burned within 2 years of the event or date of the emergency proclamation. (3.03.D.2.c).

Like the SIP-approved rules, the revised rules require that persons conduct burning during daylight hours, with limited exceptions. The revised rules also add specific requirements for the supervision of fires, location of fires, size of fires, distance requirements from buildings, fences, other combustible materials, and other fires, and the requirement to burn on a noncombustible surface (3.03.C.2 and 3.03.D.2). The revised rules continue to list materials that are prohibited from being burned (3.03.D.1). This list is broader than the list in the existing SIP-approved rules. In addition to these general requirements applicable to all burning, the revised rules contain specific requirements for firefighting training fires and agricultural burning (3.03.E

and 3.03.F). These revisions improve the stringency, clarity and enforceability of the outdoor burning rules as compared to the current SIP-approved rules.

Permit Requirements

As with the SIP-approved rules, burning is not allowed without a permit, unless exempted (3.03.C.1.e and Table 3.03-1). The revised rules now require permits for Indian ceremonial fires and for firefighting training. The revised rules also establish three types of permits that YRCAA may issue depending on the type of burning, including individual permits, annual permits, and general rule permits (3.03.J). The revised rules also allow YRCAA to add specific conditions to permits as necessary before or after permit issuance (3.03.J.6). Regarding general permits, the revised rules include several permits with standard conditions, including for training fires and large recreational fires. In general, these revisions make the outdoor burning rules more stringent. The EPA specifically notes that the permit requirement in the revised rules for ceremonial fires and firefighting training strengthen the rules.

Permit Limited Exemptions

The revised rules include specific, narrow exemptions from the permitting requirements. Importantly, burns exempt from permitting are still subject to the general restrictions and prohibitions in 3.03.C as modified by Table 3.03-1. Specific limited exemptions are detailed in Table 3.03-1. Certain limited exemptions include incidental quantities of fence rows and windblown vegetation, irrigation or drainage ditches, and orchard prunings (Table 3.03-1). The revised rules also allow nonprofit organizations to be granted limited exemptions for large recreational fires in prohibited areas and for burning outside daylight hours (Table 3.03-1 and General Rule Permit No. 3.03-5). Overall, these limited exemptions appear equivalent to or more stringent than the current SIP-approved rules.

Program Delegation

The revised rules include provisions for partnering with local, county, state, and Federal agencies to administer the open burning program (3.03.I and Table 3.03-2). The revised rules

allow for other entities to administer the permitting program provided the entity meets certain requirements. The revised rules also allow YRCAA to delegate authority to issue permits on behalf of YRCAA to other entities. On May 19, 2023, YRCAA submitted a clarification letter to the EPA explaining that Indian ceremonial fires, residential/tumbleweed, and weed abatement are the only types of burning with permitting programs available for delegation pursuant to subsection 3.03.I. YRCAA also clarified that YRCAA and the Washington Department of Ecology interpret subsection 3.03.B, subsection 3.03.I and Table 3.03-2 as establishing a delegation program such that persons conducting outdoor and agricultural burning subject to Rule 3.03 must comply with Rule 3.03 irrespective of whether program implementation is delegated pursuant to subsection 3.03.I and Table 3.03-2. Also, YRCAA and the Washington Department of Ecology acknowledge that once the EPA approves Rule 3.03 and incorporates the rule into 40 CFR part 52, any change to the scope or stringency of *Regulation 1*, including through deferral of the outdoor and agricultural program to another agency, must be submitted by the State for approval by the EPA in accordance with CAA section 110 and 40 CFR part 51.

Provisions the EPA is Not Approving

The revised rules include some provisions that the EPA cannot approve. These include provisions related to nuisance, asbestos, fees, and requirements of other agencies. The EPA's authority to approve SIPs extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of section 110 of the CAA. Therefore, the EPA is not approving the following provisions and no further EPA action on these rules is required.

Nuisance provisions: Rule 3.03.E.2.c., General Rule Permit No. 3.03-1.E.2.b, General Rule Permit No. 3.03 -2.E.2.b, General Rule Permit No. 3.03-3.E.2.b, General Rule Permit No. 3.03-4.E.2.c, and General Rule Permit No. 3.03-5.E.2.d.

Asbestos provisions: Rule 3.03.E.3.d, General Rule Permit No. 3.03-1.E.2.d, General Rule Permit No. 3.03-1.E.2.e.

Fee provisions: Rule 3.03.K.

Requirements of other agencies: Rule 3.03.C.2.g, Rule 3.03.E.2a., General Rule Permit No. 3.03 -1.G, General Rule Permit No. 3.03-2.G, General Rule Permit No. 3.03-3.G, General Rule Permit No. 3.03-4.G, and General Rule Permit No. 3.03-5.G.

Conclusion of EPA Analysis

Based on our review, the EPA is proposing to conclude that the revised open and agricultural burning rules will not interfere with any applicable requirement concerning attainment or maintenance of the NAAQS. The EPA proposes to determine that the revisions result in an overall strengthening of the requirements for open and agricultural burning.

IV. Proposed Action

The EPA is proposing to approve the SIP revisions for outdoor and agricultural burning submitted by Washington on October 14, 2021, because they meet Clean Air Act requirements. We are proposing to approve *Regulation 1, Article 3, Section 3.03* into the federally-approved SIP, except the following rules: 3.03.C.2.g, 3.03.E.2a, 3.03.E.2.c, 3.03.E.3.d, 3.03.K; and the following provisions in General Rule Permit No.: 3.03-1.E.2.b, 3.03-1.E.2.e, 3.03 -1.G, 3.03 -2.E.2.b, 3.03-1.E.2.d, 3.03-2.G, 3.03-3.E.2.b, 3.03-3.G, 3.03-4.E.2.c, 3.03-4.G, 3.03-5.E.2.d, and 3.03-5.G. We are also proposing to remove from the federally-approved SIP the outdated *Regulation 1, Article 5* provisions, *Sections 5.01-5.05*, that are replaced by *Section 3.03*.

V. Environmental Justice Considerations

To provide additional context and information to the public on potential environmental burdens and susceptible populations in underserved communities in Yakima County, we conducted a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool, EJScreen, version 2.1.² We note, however, that this screening analysis does not serve as a basis for this proposed action. As detailed in section II of this preamble, the EPA's

² EJScreen provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJScreen is available at <https://www.epa.gov/ejscreen/what-ejscreen>.

proposed action is based on its determination that the SIP revision submitted by Washington meets Clean Air Act requirements.

EJScreen includes 12 EJ indexes, each of which combines demographic factors with a single environmental factor.³ EJScreen also includes a demographic index that combines low income, race and ethnicity data for an area.⁴ Additionally, there are 7 socioeconomic indicators in EJScreen: people of color; low income; unemployment rate; limited English speaking households; less than high school education; low life expectancy; under age 5; over age 64.⁵ The EPA has determined that the use of an initial data filter in EJScreen promotes consistency and provides a pragmatic first step for EPA programs and regions when interpreting screening results. For early applications of EJScreen, the EPA has identified the 80th percentile filter as that initial starting point. For more information on percentiles, please see the EJScreen technical documentation.⁶

There are 6 EJ indexes in Yakima County that are higher than the state or national 80th percentile. These are the EJ Index for: Particulate Matter 2.5 (94th state percentile, 86th U.S. percentile); ozone (95th state percentile, 70th U.S. percentile); air toxics cancer risk (91st state percentile, 83rd percentile); air toxics respiratory health (91st state percentile, 87th percentile

³ The 12 EJ indexes in EJScreen are: fine particulate matter (annual average of fine particulate matter in ambient air); ozone (summer seasonal ozone averages); diesel particulate matter (diesel particulate matter level in air); air toxics cancer risk (lifetime cancer risk of inhalation of air toxics); air toxics respiratory hazard index; traffic proximity (count of vehicles per day at major roads divided by distance); lead paint (housing built before 1960, as index of potential exposure to lead paint); superfund proximity (count of proposed and listed Superfund national priority list sites divided by distance); risk management plan facility proximity (count of risk management plan facilities divided by distance); hazardous waste proximity (count of waste transfer, storage and disposal facilities and large quantity generators divided by distance); underground storage tanks (count of leaking underground storage tanks and tanks within a buffered block group); wastewater discharge (risk screening environmental indicators modeled toxic concentrations at stream segments divided by distance).

⁴ The demographic index in EJScreen combines the average of the number of individuals whose household income is less than twice the poverty level and the number of individuals who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino.

⁵ The unemployment indicator is based on the number of individuals who did not have a job at all during the reporting period made at least one specific active effort to find a job during the prior 4 weeks and were available for work (unless temporarily ill). The less than high school education indicator is based on the number of individuals age 25 and older with less than a high school degree. The limited English-speaking indicator is based on the percent of households in which all members age 14 years and over speak a non-English language and also speak English less than 'very well'. The low life expectancy indicator is based on the average life expectancy ranked as percentiles. The under age 5 indicator is based on the percent of individuals under age 5. The over age 64 indicator is based on the percent of individuals over age 64.

⁶ EJScreen Technical Documentation, available at https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.

U.S.), and risk management plan facility proximity (92nd state percentile, 82nd percentile).

For the demographic index, Yakima County is in the 90th percentile for the state and in the 75th percentile for the U.S. Additionally, there are 4 socioeconomic indicators in Yakima County that are higher than the state or national 80th percentile. These are people of color (86th state percentile, 71st U.S. percentile); low income (84th state percentile, 72nd U.S. percentile); limited English speaking households (84th state percentile, 81st U.S. percentile); less than high school education (94th state percentile, 87th U.S. percentile).

This proposed action would approve the revised YRCAA outdoor and agricultural burning rules submitted by Washington. We expect that this action and resulting requirements will generally be neutral or contribute to reduced environmental and health impacts on all populations in Yakima County, including people of color and low-income populations. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

VI. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the *Regulation 1, Article 3, Section 3.03* provisions described in sections II and III of this preamble. Also, in this document, the EPA is proposing to remove, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to remove the incorporation by reference of the *Regulation 1, Article 5, Sections 5.01-5.05*, as described in sections II and III of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://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).

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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).

YRCAA did not evaluate environmental justice considerations as part of its SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 20, 2023.

Casey Sixkiller,
Regional Administrator, Region 10.

