



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2022-0731, FRL-10545-02-R10]

Air Plan Approval; WA; Smoke Management Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Washington State Implementation Plan (SIP) revisions submitted on August 10, 2022. The submitted revisions incorporate the most recent updates to Washington's Smoke Management Plan and reflect state legislative and regulatory changes. The EPA is approving the revisions based on our determination that the revisions are consistent with Clean Air Act requirements.

DATES: This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2022-0731. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which 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 at <https://www.regulations.gov>, or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Randall Ruddick, EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle WA, 98101, (206) 553-1999,

ruddick.randall@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we” or “our” is used, it means the EPA.

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I. Background

On March 23, 2023, the EPA proposed to approve Washington’s August 10, 2022, SIP submission revising the Washington Smoke Management Plan (88 FR 17481). The reasons for our proposed approval are included in the proposal and will not be restated here. The public comment period closed on April 24, 2023. We received one anonymous comment in support of our proposed action; therefore, we are finalizing our action as proposed.

II. Final Action

The EPA is approving and incorporating by reference, where appropriate, Washington’s 2022 submitted revisions into the Washington SIP 40 CFR part 52, subpart WW as discussed in our March 23, 2023, proposed approval (88 FR 17481). Once this approval becomes effective, the Washington SIP will include the following statutes and regulations:

- RCW 52.12.103, Burning Permits—Issuance—Contents (state effective March 27, 1984);
- RCW 52.12.104, Burning Permits—Duties of permittee (state effective March 27, 1984);
- RCW 76.04.005, Definitions. (1) “Additional fire hazard” (5) “Department protected lands” (9) “Forest debris” (11) “Forestland” (12) “Forestland owner,” “owner of forestland,” “landowner,” or “owner” (13) “Forest material” (15) “Landowner operation”

(18) “Participating landowner” (20) “Slash” (21) “Slash burning” (23) “Unimproved lands” (state effective July 24, 2015);

- RCW 76.04.205, Burning Permits—Civil Penalty (state effective July 25, 2021);

- RCW 70A.15.1030, Definitions. (21) “Silvicultural burning” (state effective June 11, 2020);

- RCW 70A.15.5000, Definition of "outdoor burning" (state effective July 26, 2020);

- RCW 70A.15.5010, (2) Outdoor burning—Fires prohibited—Exceptions (state effective June 11, 2020);

- RCW 70A.15.5020, Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning, except (3) (state effective June 11, 2020);

- RCW 70A.15.5120, Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction on silvicultural operations—Issuance—Fees (state effective June 11, 2020);

- RCW 70A.15.5130, Silvicultural forest burning—Reduce statewide emissions—Exemption—Monitoring program (state effective July 28, 2019);

- RCW 70A.15.5140, Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction on silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris (state effective June 11, 2020);

- RCW 70A.15.5150, Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits (state effective June 11, 2020);

- RCW 70A.15.5190, Outdoor burning allowed for managing storm or flood related debris (state effective June 11, 2020);

- WAC 332-24-201, Burning Permit Program—Requirements and Exceptions (state

effective June 30, 1992);

- WAC 332-24-205, General rules--minimum requirements for all burning, except (13) (state effective November 22, 2019);
- WAC 332-24-211, Specific rules for small fires not requiring a written burning permit (solely for the purpose of establishing the size threshold for burns covered by the Smoke Management Plan) (state effective June 30, 1992);
- WAC 332-24-217, Burning permit—penalty (state effective June 30, 1992);
- WAC 332-24-221, Specific rules for burning that requires a written burning permit (state effective February 1, 2012).

In addition, the EPA is proposing to approve, but not incorporate by reference, into the Washington SIP at 40 CFR part 52, subpart WW the Department of Natural Resources Smoke Management Plan, state effective May 10, 2022 (including all Appendices to such plan), as such plan applies to silvicultural burning regulated by DNR.

We note that, as provided in 40 CFR 52.2476 of the Washington SIP, any variance or exception to the 2022 SMP granted by DNR or Ecology must be submitted by Washington for approval to EPA in accordance with the requirements for revising SIPs in 40 CFR 51.104 and any such variance or exception does not modify the requirements of the federally approved Washington SIP until approved by EPA as a SIP revision.

III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of regulatory provisions described in section II of this preamble and set forth in the amendments to 40 CFR part 52 in this document. The EPA has made, and will continue to make, these materials reasonably 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). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. 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 13563 (76 FR 3821, January 21, 2011);
- 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);

¹ 62 FR 27968 (May 22, 1997).

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); 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.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the Clean Air Act and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of this action, it is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for

people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to potentially affected tribes in a letter dated May 24, 2022.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter,
Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 12, 2023.

Casey Sixkiller,
Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION
PLANS**

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

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

Subpart WW—Washington

2. Amend § 52.2470 as follows:

a. In paragraph (c), table 1, by adding:

- i. The heading “Washington Administrative Code, Chapter 332-24—Forest Protection” and the entries “332-24-201”, “332-24-205”, “332-24-211”, “332-24-217”, and “332-24-221” immediately after the entry “173-492-100”;
- ii. The heading “Revised Code of Washington, Chapter 52.12 - Fire Protection Districts, Powers—Burning Permits” and the entries “52.12.103” and “52.12.104” immediately after newly added entry “332-24-221”;
- iii. The heading “Revised Code of Washington, Chapter 70A.15—Washington Clean Air Act” and the entries “70A.15.1030(21)”, “70A.15.5000”, “70A.15.5010(2)”, “70A.15.5020”, “70A.15.5120”, “70A.15.5130”, “70A.15.5140”, “70A.15.5150”, “70A.15.5190” immediately after newly added entry “52.12.104”; and
- iv. The heading “Revised Code of Washington, Chapter 76.04—Washington Clean Air Act” and the entries “76.04.005” and “76.04.205” immediately after newly added entry “70A.15.5190”; and

b. In paragraph (e), table 2, by adding the heading “Smoke Management Planning” and the entry “Department of Natural Resources 2022 Smoke Management Plan” immediately after the entry for “Regional Haze Progress Report”.

The additions read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

TABLE 1—REGULATIONS APPROVED STATEWIDE

[Not applicable in Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation) and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.]

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
Washington Administrative Code, Chapter 332-24—Forest Protection				
332-24-201	Burning Permit Program—Requirements and Exceptions	6/30/92	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
332-24-205	General rules—Minimum Requirements for All Burning	11/22/19	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except section (13).
332-24-211	Specific rules for small fires not requiring a written burning permit.	7/31/92	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Included for the purpose of setting the size limit for burns covered by the Department of Natural Resources 2022 Smoke Management Plan in paragraph (e), Table 2.

332-24-217	Burning permit requirements—Penalty.	7/31/92	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
332-24-221	Specific Rules for Burning That Requires a Written Burning Permit	2/1/12	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
Revised Code of Washington, Chapter 52.12—Fire Protection Districts, Powers—Burning Permits				
52.12.103	Burning permits—Issuance—Contents.	3/27/84	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
52.12.104	Burning permits—Duties of permittee.	3/27/84	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
Revised Code of Washington, Chapter 70A.15—Washington Clean Air Act				
70A.15.10 30(21)	Definitions. “Silvicultural burning”.	6/11/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL	

			REGISTER CITATION]	
70A.15.5000	Definition of “outdoor burning.”	7/26/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
70A.15.5010 (2)	Outdoor burning—Fires prohibited—Exceptions.	6/11/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except (1).
70A.15.5020	Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning.	6/11/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except (3).
70A.15.5120	Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—issuance—Fees.	6/11/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
70A.15.5130	Silvicultural forest burning—Reduce statewide	7/28/19	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER],	

	emissions— Exemption— Monitoring program.		[INSERT FEDERAL REGISTER CITATION]	
70A.15.51 40	Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations— Conditions for issuance and use of permits—Air quality standards to be met— Alternate methods to lessen forest debris.	6/11/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
70A.15.51 50	Cooperation between department of natural resources and state, local, or regional air pollution authorities— Withholding of permits.	6/11/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
70A.15.51 90	Outdoor burning allowed for managing storm or flood- related debris.	6/11/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
Revised Code of Washington, Chapter 76.04—Washington Clean Air Act				
76.04.005	Definitions.	7/24/15	[INSERT DATE OF PUBLICATION IN THE	Except (2), (3), (4), (6), (7), (8), (10), (14), (16), (17), (19), (22)

			FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
76.04.205	Burning Permits— Civil Penalty.	7/25/21	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	

* * * * *

(e) * * *

TABLE 2—ATTAINMENT, MAINTENANCE, AND OTHER PLANS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	*
Smoke Management Planning				
Department of Natural Resources 2022 Smoke Management Plan	Statewide	8/10/22	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
*	*	*	*	*