



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2021-0752; FRL-9203-02-R10]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving 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: This action is effective on **[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-2021-0752. 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., 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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, EPA Region 10 at

(206) 553-6121, or vaupel.claudia@epa.gov.

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

I. Background

On July 26, 2023, the EPA proposed to approve Washington’s October 14, 2021, SIP submission which significantly revised the SIP-approved outdoor burning rule for the Yakima area (88 FR 48147). The reasons for our proposed approval were stated in the proposed rulemaking and will not be re-stated here. The public comment period for our proposed approval ended on August 25, 2023, and we did not receive comments. Therefore, we are finalizing our action as proposed.

II. Final Action

The EPA is approving into the Washington SIP, the rule revisions for outdoor and agricultural burning submitted by Washington on October 14, 2021, because they meet Clean Air Act requirements. The rule revisions include updates to applicability, general prohibitions and requirements for all burning, permit requirements and limited exemptions, program delegation, and rule renumbering. Based on our review, we determined that the rule revisions result in an overall strengthening of the requirements for open and agricultural burning in Yakima County.

The EPA is approving into the federally-approved SIP the YRCAA Regulation 1, Article 3, Section 3.03 (regulating outdoor and agricultural burning in Yakima County), effective September 9, 2020, except the following provisions: 3.03.C.2.g, 3.03.E.2.a, 3.03.E.2.c, 3.03.E.3.d, 3.03.K; and the following general rule permit provisions:

General Rule Permit No. 3.03-1 Conditions: E.2.b, E.2.d, E.2.e, and G;

General Rule Permit No. 3.03-2 Conditions: E.2.b and G;

General Rule Permit No. 3.03-3 Conditions: E.2.b and G;

General Rule Permit No. 3.03-4 Conditions: E.2.c and G; and

General Rule Permit No. 3.03-5 Conditions E.2.d and G.

We are also removing from the federally-approved SIP the outdated Regulation 1, Article 5 provisions, Sections 5.01 through 5.05 (regulating outdoor burning in Yakima County), state effective December 15, 1995, that are replaced by Section 3.03.

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, we are finalizing the incorporation by reference of Regulation 1, Article 3, Section 3.03 provisions described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through 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 State implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA 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. The EPA is also removing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing from incorporation by reference the Regulation 1, Article 5, Sections 5.01 through 5.05 provisions described in section II of this preamble.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. 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 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 it 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).

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.”

Neither Washington nor YRCAA evaluated environmental justice considerations as part of the SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis 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.

This action is subject to the Congressional Review Act, and 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 CAA, 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 22, 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. In § 52.2470, amend Table 10 in paragraph (c) by:

- a. Adding the entry “3.03” in numerical order under the heading “Article 3—Rules”; and
- b. Removing the heading “Article V—Emissions Standards and Preventative Measures” and the entries “5.01”, “5.02”, “5.03”, “5.04”, and “5.05”.

The addition reads as follows:

§ 52.2470 Identification of plan.

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(c) * * *

TABLE 10—Additional Regulations Approved for the Yakima Regional Clean Air Agency (YRCAA) Jurisdiction

[Applicable in Yakima county, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations; any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
Yakima Regional Clean Air Agency Regulations				
*	*	*	*	*
Article 3—Rules				
*	*	*	*	*
3.03	Outdoor and Agricultural Burning	9/9/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except subsection 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.d, 3.03-1.E.2.e, 3.03 -1.G, 3.03 -2.E.2.b, , 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
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