



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2023-0341: FRL-11175-02-R10]

Air Plan Approval; Washington; Southwest Clean Air Agency; Emission Standards and Controls for Sources Emitting Gasoline Vapors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Washington State Implementation Plan (SIP) for the Southwest Clean Air Agency (SWCAA) jurisdiction as it relates to the ozone National Ambient Air Quality Standard. This revision updates SWCAA's requirements in the SIP for Stage I and Stage II vapor recovery systems at gasoline dispensing facilities including: decommissioning existing Stage II systems incompatible with onboard refueling vapor recovery systems on or before January 1, 2023; allowing removal from service of Stage II vapor recovery equipment compatible with onboard refueling vapor recovery on or after January 1, 2023; and removing the requirement for Stage II vapor recovery at new installations. The revisions to the SIP also include, among other changes, revised requirements for installation of enhanced conventional nozzles, installation of low permeation hoses, and annual testing based on facility throughput. SWCAA's submittal, in coordination with the Washington Department of Ecology, included a demonstration that such removal of Stage II requirements is consistent with the Clean Air Act and EPA guidance.

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-2023-0341. 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: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue – Suite 155, Seattle, WA 98101, at (206) 553-0256, or hunt.jeff@epa.gov.

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

I. Background

On June 22, 2023, SWCAA, in coordination with the Washington Department of Ecology as the Governor’s designee for revisions to the SIP, submitted the current version of SWCAA 491 “Emission Standards and Controls for Sources Emitting Gasoline Vapors” for EPA approval. On August 10, 2023, we proposed to approve the submission (88 FR 54259). The reasons for our proposed approval are included in the proposal and will not be restated here. The public comment period closed on September 11, 2023. We received no comments on our proposed action and therefore we are finalizing our action as proposed.

II. Final Action

We have determined that SWCAA’s demonstration for removal of Stage II equipment meets Clean Air Act requirements. Therefore, we are approving and incorporating by reference SWCAA 491 “Emission Standards and Controls for Sources Emitting Gasoline Vapors.” Upon the effective date of this action, the Washington SIP will include the following updated sections of SWCAA 491 as they apply in the SWCAA

local jurisdiction:

- 491-010 Policy and Purpose (establishing overall policy to control emissions of air contaminants from gasoline marketing and dispensing facilities) (State effective March 18, 2001);
- 491-015 Applicability (defining the types of operations covered, including storage, transport, and transfer of gasoline) (State effective March 18, 2001);
- 491-020 Definitions (defining key terms used in the regulations to control gasoline vapor emissions) (State effective February 7, 2020);
- 491-030 Registration (requiring gasoline marketing and dispensing facilities to register annually with the local air agency) (State effective February 7, 2020);
- 491-040 Gasoline Vapor Control Requirements (requiring vapor controls on specific types of gasoline plants, terminals, tanks and other equipment) (State effective February 7, 2020);
- 491-050 Failures, Certification, Testing and Recordkeeping (prescribing vapor recovery system certification, leak testing, monitoring and recordkeeping) (State effective February 7, 2020);
- 491-060 Severability (stating that each section of the gasoline vapor control regulations are severable from the others in the event one or more are deemed invalid) (State effective March 18, 2001).

This version of SWCAA 491 removes from the Washington SIP the requirement for Stage II vapor recovery systems in SWCAA's jurisdiction and adds additional VOC controls such as the installation of enhanced conventional nozzles and low permeation hoses, as well as other historic changes since the EPA's last approval.

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 the Southwest Clean Air Agency 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 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). 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 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

¹ 62 FR 27968 (May 22, 1997).

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.

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 Southwest Clean Air Agency and the Washington Department of Ecology did

not evaluate environmental justice (EJ) considerations as part of the 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 the action being taken here, this action 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 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 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).

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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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. Amend § 52.2470, paragraph (c), table 8 under the heading “Emissions Standards and Controls for Sources Emitting Gasoline Vapors” by revising the entries “491-010”, “491-015”, “491-020”, “491-030”, “491-040”, “491-050”, and “491-060” to read as follows:

§ 52.2470 Identification of plan.

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(c) * * *

TABLE 8—ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION

[Applicable in Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, 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
Southwest Clean Air Agency Regulations				
*	*	*	*	*
Emissions Standards and Controls for Sources Emitting Gasoline Vapors				
491-010	Policy and Purpose	3/18/01	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	

491-015	Applicability	3/18/01	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
491-020	Definitions	2/7/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
491-030	Registration	2/7/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
491-040	Gasoline Vapor Control Requirements	2/7/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
491-050	Failures, Certification, Testing and Recordkeeping	2/7/20	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
491-060	Severability	3/18/01	[INSERT DATE	

			OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]			
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