



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R10-OAR-2023-0342: FRL-11155-02-R10]**

**Air Plan Approval; Washington; Southwest Clean Air Agency, General Air Quality Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the Washington State Implementation Plan (SIP) that were submitted on June 22, 2023, by the Department of Ecology in coordination with the Southwest Clean Air Agency (SWCAA). In 2017, the EPA approved a comprehensive update to *SWCAA 400 General Regulations for Air Pollution Sources* in the SIP, which includes new source review permitting requirements as well as other general requirements for sources regulated under SWCAA's jurisdiction. In this action, the EPA is approving minor updates to SWCAA 400 promulgated since our comprehensive approval in 2017.

**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-2023-0342. 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

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

## **I. Background**

On June 22, 2023, Washington submitted a SIP revision to the EPA. In the submission, Southwest Clean Air Agency (SWCAA) made minor revisions to the general air quality regulations and requested, in coordination with the Washington Department of Ecology, to update the federally approved SIP. On July 31, 2023, we proposed to approve the submission (88 FR 49398). The reasons for our proposed approval are included in the proposal and will not be restated here. The public comment period closed on August 30, 2023. We received no comments on our proposed action and therefore we are finalizing our action as proposed.

## **II. Final Action**

The EPA is approving and incorporating by reference the regulatory changes to *SWCAA 400 General Regulations for Air Pollution Sources* submitted by Washington on June 22, 2023.<sup>1</sup> The EPA is also approving a minor, non-substantive change to the Code of Federal Regulations (CFR) at 40 CFR 52.2470(c) – *Table 8* under the applicability subheading to more clearly reflect jurisdiction for issuing permits under the Prevention of Significant Deterioration (PSD) program. Upon the effective date of this action, the Washington SIP will include the following regulations as they apply in the SWCAA local jurisdiction:

- 400–025 Adoption of Federal Rules (adopting Federal regulations cited in the local

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<sup>1</sup> On June 22, 2023, Washington also submitted a separate SIP revision titled “Startup, Shutdown, and Malfunction (SSM) Provisions in Southwest Clean Air Agency 400 General Regulations for Air Pollution Sources” which is outside the scope of this action.

agency rules) state effective September 10, 2021;

- 400–030 Definitions (establishing definitions used in the local agency rules) state effective September 10, 2021;
- 400–036 Portable Sources From Other Washington Jurisdictions (outlining requirements for portable sources locating within the local jurisdiction) state effective September 10, 2021;
- 400–050 Emission Standards for Combustion and Incineration Units (establishing emissions standards for sources within the local jurisdiction) state effective September 10, 2021;
- 400–060 Emission Standards for General Process Units (establishing particulate matter emissions standards) state effective March 21, 2020;
- 400–072 Small Unit Notification for Selected Source Categories (establishing uniform standards for certain small source categories) state effective September 10, 2021;
- 400–074 Gasoline Transport Tanker Registration (establishing standards for gasoline transport tankers) state effective June 18, 2017;
- 400–091 Voluntary Limits on Emissions (allowing stationary sources to take a voluntary reduction in potential to emit) state effective September 10, 2021;
- 400–105 Records, Monitoring and Reporting (establishing compliance requirements on stationary sources) state effective September 10, 2021;
- 400–106 Emission Testing and Monitoring at Air Contaminant Sources (establishing emissions testing standards for sources and emissions units) state effective September 10, 2021;
- 400–109 Air Discharge Permit Applications (establishing permit processes for new sources in the local jurisdiction) state effective September 10, 2021;
- 400–110 Application Review Process for Stationary Sources (New Source Review)

(establishing agency review standards for air permit applications) state effective September 10, 2021;

- 400–111 Requirements for New Sources in a Maintenance Plan Area (establishing specific permit requirements within a former nonattainment area) state effective September 10, 2021;
- 400–112 Requirements for New Sources in Nonattainment Areas (establishing permit requirements for current nonattainment areas) state effective September 10, 2021;
- 400–113 Requirements for New Sources in Attainment or Nonclassifiable Areas (establishing permit requirements in areas that have not been designated as nonattainment for criteria pollutants) state effective September 10, 2021;
- 400–114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source (establishing permit requirements for modification of emissions controls at existing facilities) state effective September 10, 2021;
- 400–136 Maintenance of Emission Reduction Credits in Bank (supporting an emissions reduction trading program) state effective September 10, 2021;
- 400–151 Retrofit Requirements for Visibility Protection (establishing requirements to minimize regional haze) state effective September 10, 2021;
- 400–171 Public Involvement (establishing public notice and other requirements for agency actions) state effective September 10, 2021;
- 400–260 Conflict of Interest (requires SWCAA board members to comply with Clean Air Act section 128) state effective September 10, 2021;
- 400–810 Major Stationary Source and Major Modification Definitions (establishing specific definitions for permitting requirements at major sources located in a nonattainment area) state effective September 10, 2021;

- 400–850 Actual Emissions—Plantwide Applicability Limitation (PAL) (adopting the Federal Emission Offset Ruling) state effective March 21, 2020;
- Appendix A SWCAA Method 9 Visual Opacity Determination Method (establishing test methods for opacity compliance) state effective March 21, 2020.

In addition to the regulations approved and incorporated by reference above, the EPA reviews and approves state and local clean air agency submissions to ensure they provide adequate enforcement authority and other general authority to implement and enforce the SIP. However, regulations describing such agency enforcement and other general authority are generally not incorporated by reference so as to avoid potential conflict with the EPA’s independent authorities. We are therefore approving the submitted revisions, effective September 10, 2021, to sections 400-230, 400-240, 400-270, and 400-280 in 40 CFR 52.2470(e), *EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures*.

### **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.<sup>2</sup>

#### **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 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

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<sup>2</sup> 62 FR 27968 (May 22, 1997).

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 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 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 as follows:

a. In paragraph (c), table 8 by:

i. Revising the table heading;

ii. Under the heading “SWCAA 400—General Regulations for Air Pollution

Sources”:

A. Adding an entry for “400–025” in numerical order;

B. Revising the entries for “400-030”, “400-036”, “400-050”, “400-060”, “400-072”;

C. Adding an entry for “400-072(5)(b)” in numerical order;

D. Revising the entries for “400-074”, “400-091”, “400-105”, “400-106”, “400-109”, “400-110”, “400-111”, “400-112”, “400-113”, “400-114”, “400-136”, “400-151”, “400-171”;

E. Adding an entry for “400-260” in numerical order; and

F. Revising the entries “400-810”, “400-850” and “Appendix A”; and

b. In paragraph (e), table 1, under the heading “Southwest Clean Air Agency Regulations” by:

i. Revising the entries for “400-230” and “400-240”;

ii. Removing the entry for “400-260”; and

iii. Revising the entries for “400-270”, and “400-280”.

The revisions and additions 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.]

<b>State/local citation</b>	<b>Title/subject</b>	<b>State/local effective date</b>	<b>EPA approval date</b>	<b>Explanations</b>
<b>Southwest Clean Air Agency Regulations</b>				
<b>SWCAA 400—General Regulations for Air Pollution Sources</b>				
*	*	*	*	*
400-025	Adoption of Federal Rules	9/10/21	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
400-030	Definitions	9/10/21	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except: 400-030(21) and (130).
400-036	Portable Sources from Other Washington Jurisdictions	9/10/21	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	

			<b>REGISTER CITATION]</b>	
*	*	*	*	*
400-050	Emission Standards for Combustion and Incineration Units	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Except: 400-050(3); 400-050(5); 400-050(6); and 400-050(7).
400-060	Emission Standards for General Process Units	3/21/20	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
*	*	*	*	*
400-072	Small Unit Notification for Selected Source Categories	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Except: 400-072(5)(a)(ii)(B); 400-072(5)(d)(ii)(B); 400-072(5)(d)(iii)(A); 400-072(5)(d)(iii)(B); all reporting requirements related to toxic air pollutants; and 400-072(5)(b), which EPA previously approved with a state-effective date of October 9, 2016.
400-072 (5)(b)	Small Unit Notification for Selected Source Categories	10/9/16	04/10/17, 82 FR 17136	
400-074	Gasoline Transport Tanker Registration	6/18/17	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER</b>	Except: 400-074(2).

			<b>CITATION]</b>	
*	*	*	*	*
400-091	Voluntary Limits on Emissions	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
400-105	Records, Monitoring and Reporting	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Except: reporting requirements related to toxic air pollutants.
400-106	Emission Testing and Monitoring at Air Contaminant Sources	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Except: 400-106(1)(d) through (g); and 400-106(2).
*	*	*	*	*
400-109	Air Discharge Permit Applications	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Except: The toxic air pollutant emissions thresholds contained in 400-109(3)(d); 400-109(3)(e)(ii); and 400-109(4).
400-110	Application Review Process for Stationary Sources (New Source Review)	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Except: 400-110(1)(d).

			<b>REGISTER CITATION]</b>	
400-111	Requirements for New Sources in a Maintenance Plan Area	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Except: 400-111(7).
400-112	Requirements for New Sources in Nonattainment Areas	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Except: 400-112(6).
400-113	Requirements for New Sources in Attainment or Nonclassifiable Areas	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Except: 400-113(5).
400-114	Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
*	* * *	*	* * *	*
400-136	Maintenance of Emission Reduction Credits in Bank	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL</b>	

			<b>REGISTER CITATION]</b>	
400-151	Retrofit Requirements for Visibility Protection	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
*	*	*	*	*
400-171	Public Involvement	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Except: 400-171(2)(a)(xii).
*	*	*	*	*
400-260	Conflict of Interest	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
*	*	*	*	*
400-810	Major Stationary Source and Major Modification Definitions	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
*	*	*	*	*
400-850	Actual Emissions - Plantwide Applicability Limitation (PAL)	3/21/20	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL</b>	

			<b>REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
*	*	*	*	*
Appendix A	SWCAA Method 9 Visual Opacity Determination Method	3/21/20	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
*	*	*	*	*

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**TABLE 1—APPROVED BUT NOT INCORPORATED BY REFERENCE REGULATIONS**

<b>State/local citation</b>	<b>Title/subject</b>	<b>State/local effective date</b>	<b>EPA approval date</b>	<b>Explanations</b>
*	*	*	*	*
<b>Southwest Clean Air Agency Regulations</b>				
*	*	*	*	*
400-230	Regulatory Actions and Civil Penalties	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
400-240	Criminal Penalties	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
*	*	*	*	*

400-270	Confidentiality of Records and Information	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
400-280	Powers of Agency	9/10/21	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	
*	*	*	*	*

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[FR Doc. 2023-21267 Filed: 9/28/2023 8:45 am; Publication Date: 9/29/2023]