



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2024-0373; FRL-12413-02-R10]

Air Plan Approval; WA; Southwest Clean Air Agency; Revisions to Excess Emissions, Startup, Shutdown, and General Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Washington State Implementation Plan (SIP) revisions to the Southwest Clean Air Agency (SWCAA) air quality regulations submitted by the State of Washington, through the Department of Ecology (Ecology) on June 22, 2023. The revisions were submitted in part to respond to the EPA's June 12, 2015 "SIP call" in which the EPA found a provision in the Washington SIP applicable in the area regulated by SWCAA to be substantially inadequate, providing affirmative defenses that operate to limit the jurisdiction of the Federal court in an enforcement action related to excess emissions during startup, shutdown, and malfunction (SSM) events. The EPA's approval of the SIP revisions to the substantially inadequate provision corrects the SWCAA deficiency identified in the 2015 SSM SIP call and the EPA's January 2022 finding of failure to submit. Washington withdrew some portions of the revisions submitted that were not identified in the 2015 SSM SIP call and therefore the EPA is not approving those withdrawn portions. The EPA proposed to approve this action on December 10, 2024, and received no comments.

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-2024-0373. 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; or email ruddick.randall@epa.gov.

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

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I. Background

On December 10, 2024 (89 FR 99177), the EPA proposed to approve State Implementation Plan (SIP) revisions to the Southwest Clean Air Agency (SWCAA) air quality regulations submitted by the State of Washington, through the Department of Ecology (Ecology) on June 22, 2023. In that proposal, we also proposed to determine that the revisions to SWCAA’s Rule 400-107, corrects the deficiency with respect to SWCAA that we identified in our June 12, 2015 action entitled “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction”¹ (“2015 SSM SIP call”)

¹ 80 FR 33839, June 12, 2015.

and our January 12, 2022, Findings of Failure to Submit² (FFS). The remaining SIP revisions submitted with the revised SWCAA Rule 400-107 on June 15, 2023, were not specified in the 2015 SSM SIP call. The reasons for our proposed approval and determination can be found in the proposed action and will not be fully restated here. The public comment period for our proposed approval and determination ended on January 9, 2025, and no comments were received, adverse or otherwise. Therefore, we are finalizing our action as proposed.

II. Final Action

The EPA is approving and incorporating by reference in the Washington SIP the revisions Washington submitted on June 22, 2023, except for those withdrawn by Washington.³ This action includes revisions to SWCAA Rule 400-107—the provision identified as inconsistent with Clean Air Act (CAA) requirements in our 2015 SSM SIP call—for the SWCAA.

Once this action becomes effective, the Washington SIP will no longer include the following regulation for SWCAA’s jurisdiction:

SWCAA Rule 400-070(2)(a), *Emission Standards for Certain Source Categories*, (State effective September 21, 1995);

This action also approves and incorporates by reference at 40 CFR 52.2470(c)—*Table 8—Additional Regulations Approved for the Southwest Clean Air Agency (SWCAA) Jurisdiction*, the following revised regulations:

- SWCAA Rule 400-040, *General Standards for Maximum Emissions*, establishing maximum emissions allowed in certain instances, (State effective September 10, 2021);
- SWCAA Rule 400-070, *General Requirements for Certain Source Categories*,

² Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying To Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 87 FR 1680 (January 12, 2022), available at www.regulations.gov, Docket ID No. EPA-HQ-OAR-2021-0863.

³ See *201_state submittal supplement_SWCAA Partial Withdrawal Request Letter - Ecology.pdf* and *202_state submittal supplement_SWCAA Partial Withdrawal Request Letter - SWCAA.pdf* included in the docket for this action.

establishing general standards for certain sources, (State effective September 10, 2021);

- SWCAA Rule 400-081, *Startup and Shutdown*, establishing certain modeling and control technology determinations for periods of startup and shutdown (State effective September 10, 2021);
- SWCAA Rule 400-107, *Excess Emissions*, establishing reporting and excusing of certain excess emissions, (State effective September 10, 2021).

These SIP revisions apply specifically to the jurisdiction of the Southwest Clean Air Agency in Washington State.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference as described in section II of this preamble. 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.⁴ Also in this document, the EPA is removing regulatory text from incorporated by reference, as described in section II. of this preamble.

IV. Statutory and Executive Orders 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, the EPA's role is to approve

⁴ 62 FR 27968 (May 22, 1997).

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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 CAA.

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).

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.

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.

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

Dated: April 17, 2025.

Emma Pokon,
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, in paragraph (c), amend table 8, under the heading “General Regulations for

Air Pollution Sources” by:

- a. Revising entry “400-040”;
- b. Removing entry “400-070(2)(a)”;
- c. Revising entries “400-070”, “400-81”, and “400-107”.

The revisions 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				
General Regulations for Air Pollution Sources				
*	*	*	*	*
400-040	General Standards for Maximum Emissions	9/10/21	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 90 FR	Except: 400-040(1)(a), (c) and (d); 400-040(2); and 400-040(4).

			[INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]	
*	*	*	*	*
400-070	General Requirements for Certain Source Categories	9/10/21	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]	Except: 400-070(3)(b); 400-070(5); 400-070(6); 400-070(7); 400-070(8)(c); 400-070(9); 400-070(10); 400-070(11); 400-070(12); 400-070(14); 400-070(15)(c); and 400-070(16)
*	*	*	*	*
400-081	Startup and Shutdown	9/10/21	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]	
*	*	*	*	*
400-107	Excess Emissions	9/10/21	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]	
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