

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2013-0707; FRL-9907-45-Region 10]

### Revision to the Washington State Implementation Plan; Update to the Solid Fuel Burning Devices Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Washington State Department of Ecology (Ecology) received on January 30, 2014. The SIP submission contains revisions to Washington's solid fuel burning device rules to control fine particulate matter (PM<sub>2.5</sub>) from residential wood combustion. The updated regulations reflect Washington State statutory changes made in 2012, setting revised PM<sub>2.5</sub> trigger levels for impaired air quality burn bans and setting criteria for prohibiting solid fuel burning devices that are not certified. The submission also contains updates to the regulations to improve the clarity of the language. We are proposing to approve these changes because they meet the requirements of the Clean Air Act and strengthen the Washington SIP.

**DATES:** Written comments must be received on or before April 3, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2013-0707, by any of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- Email: *R10-Public\_Comments@epa.gov*.
- Mail: Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- Hand Delivery/Courier: EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R10-OAR-2013-0707. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI 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. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt at (206) 553-0256, *hunt.jeff@epa.gov*, or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, it is intended to refer to the EPA.

The following outline is provided to aid in locating information in this preamble:

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#### I. Background

On July 18, 1997, the EPA promulgated the 1997 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS), including an annual standard of 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) based on a three-year average of annual mean PM<sub>2.5</sub> concentrations, and a 24-hour (or daily) standard of 65 µg/m<sup>3</sup> based on a three-year average of the 98th percentile of 24-hour concentrations (62 FR 38652). The EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to PM<sub>2.5</sub>. On October 17, 2006, the EPA revised the PM<sub>2.5</sub> 24-hour standard from 65 µg/m<sup>3</sup> to 35 µg/m<sup>3</sup> based on additional evidence and health studies (71 FR 61144).

Following promulgation of a new or revised NAAQS, the EPA is required by the Clean Air Act (CAA) to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. Effective December 14, 2009, the EPA designated Tacoma-Pierce County, Washington (partial county designation) as a nonattainment area for the 2006 24-hour PM<sub>2.5</sub> standard (74 FR 58688; published on November 13, 2009). Under the CAA, a state is required to submit a revision to its SIP to meet nonattainment requirements within three years of the effective date of designation.

In 2012, the Washington State Legislature revised Chapter 70.94 Revised Code of Washington (RCW) *Washington Clean Air Act* (Washington Clean Air Act) to address the Tacoma-Pierce County PM<sub>2.5</sub> nonattainment area (Tacoma-Pierce County area) and other areas at risk for nonattainment statewide. On November 28, 2012, Ecology, in close coordination with the Puget Sound Clean Air Agency (PSCAA), submitted *Regulation 1—Article 13: Solid Fuel Burning Device Standards*, adopted by the PSCAA Board on October 25, 2012. These local air agency regulations, covering the Tacoma-Pierce County area, incorporated the PM<sub>2.5</sub> related statutory changes to Chapter 70.94 RCW. On May 29, 2013, the EPA approved the PSCAA regulations into the Washington SIP and approved Ecology's "2008 Baseline Emissions Inventory and Documentation" satisfying the attainment planning requirements due at the time for the Tacoma-Pierce County area (78 FR 32131).

On January 30, 2014, Ecology submitted to the EPA a SIP revision updating Chapter 173-433 of the

Washington Administrative Code (WAC) *Solid Fuel Burning Devices* for purposes of aligning the regulations with the statutory changes made in 2012 by the Washington State Legislature, and supporting the local PSCAA regulations approved on May 29, 2013 by the EPA (78 FR 32131). The SIP revision also helps provide the necessary regulatory framework to support an anticipated maintenance plan and redesignation request for the Tacoma-Pierce County area in the future.

## II. Summary of SIP Revision

In the January 30, 2014 submission, Ecology revised the regulations contained in Chapter 173–433 WAC *Solid Fuel Burning Devices* to reflect two significant changes to the Washington Clean Air Act. Ecology revised Chapter 173–433–140 WAC *Criteria for Impaired Air Quality Burn Bans* to remove outdated coarse particulate matter (PM<sub>10</sub>) burn ban trigger levels and replace them with more stringent PM<sub>2.5</sub> trigger levels to make it consistent with Chapter 70.94.473 of the Washington Clean Air Act. Ecology provided an analysis covering former PM<sub>10</sub> nonattainment areas in both Western and Eastern Washington to demonstrate that the PM<sub>2.5</sub> trigger levels are more stringent and will provide continued maintenance of the PM<sub>10</sub> NAAQS, established on July 1, 1987 (52 FR 24663). Ecology also removed an outdated carbon monoxide trigger level for residential wood combustion curtailment. The EPA agrees with Ecology's analysis that historic

violations of the 1985 carbon monoxide NAAQS centered on areas of high traffic congestion and have little connection with dispersed residential woodstove emissions. The EPA's past approval of maintenance plans for carbon monoxide areas located in Washington applied specifically to transportation control measures, so this revision will have no impact on control measures relied upon for attainment and maintenance of the 1985 carbon monoxide NAAQS in these areas of Washington. These transportation control measures combined with continuing fleet turnover with cleaner new cars and trucks have brought carbon monoxide levels to historic lows. Ecology cites monitoring data from the Spokane carbon monoxide maintenance area where carbon monoxide levels are roughly one-fifth of the federal limit, with little to no potential for future violations.

In the January 30, 2014 submission, Ecology also added a new section, Chapter 173–433–155 WAC *Criteria for Prohibiting Solid Fuel Burning Devices that Are Not Certified* to incorporate changes to Chapter 70.94.477 of the Washington Clean Air Act. This provision allows Ecology or a local air agency to prohibit the use of uncertified solid fuel burning devices in a fine particulate matter nonattainment or maintenance area, even in the absence of an air quality episode or impaired air quality burn ban. The new Chapter 173–433–155 WAC is consistent with and supports the local PSCAA corollary contained in Regulation 1, Section 13.07 *Prohibitions on Wood Stoves That Are*

*Not Certified Wood Stoves*, already approved into the Washington SIP. This Washington regulation and the local PSCAA corollary will be a key component in Ecology's future maintenance plan demonstration showing that the current low levels of PM<sub>2.5</sub> for the Tacoma-Pierce County area can be sustained over time. Lastly, Ecology updated other sections of Chapter 173–433 WAC to improve clarity and ensure that consistent terminology is used throughout all the sections.

## III. Proposed Action

The EPA is proposing to approve Washington's SIP revision received January 30, 2014. Specifically, the EPA is proposing to approve and incorporate by reference into the SIP the rules shown in Table 1 below. In addition, Ecology submitted Chapter 173–433–200 WAC *Regulatory Actions and Penalties* to demonstrate adequate enforcement authority to implement the program. Regulations describing agency enforcement authority are not generally incorporated into the SIP to avoid potential conflict with the EPA's independent authorities. Therefore, the EPA has reviewed and is proposing approval of Chapter 173–433–200 WAC as having adequate enforcement authority, but will not incorporate this section by reference into the SIP codified in 40 CFR 52.2470(c). We have made the determination that this action is consistent with section 110 of the CAA. The EPA is soliciting public comments which will be considered before taking final action.

TABLE 1—SUBMITTED RULES

Agency	Citation (WAC)	Title	State effective date	Submitted
Ecology	173–433–010	Purpose	02/23/14	01/30/14
Ecology	173–433–020	Applicability	02/23/14	01/30/14
Ecology	173–433–030	Definitions	02/23/14	01/30/14
Ecology	173–433–100	Emission Performance Standards	02/23/14	01/30/14
Ecology	173–433–110	Opacity Standards	02/23/14	01/30/14
Ecology	173–433–120	Prohibited Fuel Types	02/23/14	01/30/14
Ecology	173–433–140	Criteria for Impaired Air Quality Burn Bans	02/23/14	01/30/14
Ecology	173–433–150	Restrictions on the Operation of Solid Fuel Burning Devices	02/23/14	01/30/14
Ecology	173–433–155	Criteria for Prohibiting the Use of Solid Fuel Burning Devices that Are Not Certified.	02/23/14	01/30/14

## IV. 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, the

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 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);
- 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 this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the State of Washington, except for 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 and the EPA is therefore approving this SIP on such lands. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated September 3, 2013. The EPA did not receive a request for consultation.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, and Particulate matter.

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

Dated: February 25, 2014.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2014-04783 Filed 3-3-14; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R2-ES-2013-0008; 4500030113]

**RIN 1018-AZ34**

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sharpnose Shiner and Smalleye Shiner

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of the comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the August 6, 2013, proposed designation of critical habitat for the sharpnose shiner (*Notropis oxyrhynchus*) and smalleye shiner (*N. buccula*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for sharpnose shiner and smalleye shiner and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed critical habitat rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** We will consider comments received or postmarked on or before April 3, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:** *Document availability:* You may obtain a copy of the proposed critical habitat rule and the associated draft economic analysis at Docket No. FWS-R2-ES-2013-0008, or by mail from the Arlington, Texas, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

*Written Comments:* You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Submit comments on the critical habitat proposal and associated DEA by searching for FWS-R2-ES-2013-0008, which is the docket number for the critical habitat proposed rulemaking.

(2) *By hard copy:* Submit comments on the critical habitat proposal and associated DEA by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2013-0008; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Debra Bills, Field Supervisor, Arlington, Texas, Ecological Services Field Office, 2005 NE Green Oaks Blvd., Suite 140, Arlington, Texas 76006, by telephone (817-277-1100), or by facsimile (817-277-1129). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for the sharpnose shiner and smalleye shiner that was published in the **Federal Register** on August 6, 2013 (78 FR 47612), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on: