

of the ambient air quality standards for particulates or if NCDAQ observes excess fugitive dust emissions from the facility beyond the property boundary for six minutes in any one hour using Reference Method 22 in 40 CFR part 60, Appendix A-7. Pursuant to paragraph (g), the Director must approve the plan if, among other things, the methods used to control fugitive dust emissions prevent fugitive dust emissions from causing or contributing to a violation of the ambient air quality standards for particulates. Paragraph (g) also includes non-substantive wording changes.

EPA has preliminarily determined that the changes to the regulations above are consistent with CAA requirements, including the requirement that they would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement. Therefore, EPA is proposing approval of the changes to these regulations.

### III. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 15A NCAC Subchapter 02D .0540, *Particulates from Fugitive Dust Emission Sources*, state effective on September 1, 2019, as discussed in sections I. and II. of this preamble. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” Section of this preamble for more information).

### IV. Proposed Action

EPA is proposing to approve the September 10, 2021, SIP revision to incorporate various changes to Rule 02D .0540, *Particulates from Fugitive Dust Emission Sources*. EPA is proposing to approve these changes for the reasons discussed above.

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 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 they meet the criteria of the CAA. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- 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 application of those requirements would be inconsistent with the CAA; and

- Does not provide 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).

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 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.

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 3, 2023.

**Daniel Blackman,**

*Regional Administrator, Region 4.*

[FR Doc. 2023-05238 Filed 3-22-23; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2022-0731, FRL-10545-01-Region 10]

### Air Plan Approval; WA; Smoke Management Plan Update

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve Washington State Implementation Plan (SIP) revisions submitted on August 10, 2022. The submitted revisions incorporate the most recent updates to Washington's Smoke Management Plan and reflect state legislative and regulatory changes. The revisions include earlier notification of burn decisions, revise the burn approval criteria to better align with state law, remove the prohibition against summer weekend burning; and allow previously prohibited burning in urban growth areas subject to an approval process that requires consideration of the impact of the approval on air quality. EPA is proposing to approve the revisions based on our determination that the revisions are consistent with Clean Air Act requirements.

**DATES:** Comments must be received on or before April 24, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2022-0731 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For

additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Randall Ruddick, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553-1999, or [ruddick.randall@epa.gov](mailto:ruddick.randall@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

### Table of Contents

- I. Background
- II. Washington’s Smoke Management Plan
- III. Evaluation of Washington’s SIP Submittal
- IV. EPA’s Proposed Action
- V. Incorporation by Reference
- VI. Statutory and Executive Orders Review

#### I. Background

Each state has a State Implementation Plan (SIP) containing the control measures and strategies to attain and maintain the national ambient air quality standards (NAAQS) established by the Environmental Protection Agency (EPA) for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP contains such elements as air pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms.

Washington adopted a Smoke Management Plan as part of the Washington SIP to reduce emissions that contribute to visibility impairment. Wildfire has had a serious impact on Washington during the past decade with many large-scale wildfires impacting air quality. Prescribed fires<sup>1</sup> have been increasingly used as a land management tool to reduce the likelihood of catastrophic wildfires by reducing the buildup of unwanted fuels and strengthening an area’s ecosystems. This controlled application of fire to wildland fuels, is done under specific environmental conditions and protocols that typically call for a prescribed fire to be confined to a predetermined area and limit the fire to an intensity and scale required to attain planned forestland

<sup>1</sup> Prescribed fires, also known as prescribed burns, refer to the controlled application of fire by a team of fire experts under specified weather conditions to restore health to ecosystems that depend on fire.

Source: <https://www.fs.usda.gov/managing-land/prescribed-fire>.

management objectives. The State anticipates increasing the application of prescribed fire in response to the increasing threat of wildfires in Washington. The state intends to balance the need to increase the use of prescribed fire as a forest management tool while minimizing smoke impacts through the implementation of policies and processes outlined in Washington’s Smoke Management Plan (SMP).

EPA first approved Washington’s SMP into the Washington SIP in 1987 (52 FR 16243, May 4, 1987) as part of Washington’s visibility protection plan. Washington updated and EPA approved the SMP in 1998 (1998 SMP) and 2003 respectively (68 FR 34821, June 11, 2003). In 2016, the Washington State Legislature provided funding to update the 1998 SMP and the Legislature made changes to statutes affecting the SMP in 2019 and 2021. After revising rules to reflect the updated legislation, Washington updated the SMP to reflect the statutory and regulatory changes. On August 10, 2022, following a state public comment process, the Washington State Department of Ecology (Ecology) submitted the updated SMP, including the statutes and regulations relied on in the Plan, to EPA for approval (2022 SMP).

#### II. Washington’s Smoke Management Plan

Washington’s SMP establishes a program to allow silvicultural burning on forestland while protecting air quality. Although Ecology is the primary delegated air quality agency for the state and submitted the Washington SMP to EPA for approval, Washington’s Department of Natural Resources (DNR) has been and continues to be the state agency with the responsibility for regulating smoke from silvicultural burning on forestland. See Revised Code of Washington (RCW) 70A.15.5120 and RCW 70A.15.5130. The Washington SMP is therefore primarily implemented by DNR with assistance from Ecology.

DNR oversees prescribed silvicultural burning in Washington to improve fire dependent ecosystems, mitigate wildfire potential, decrease forest susceptibility to insects or disease, and otherwise enhance forest resiliency to fire. The purpose of the SMP is to coordinate and facilitate the statewide regulation of prescribed, silvicultural (forestland) burning on lands under the authority of DNR, and on unimproved, federally managed forestlands and participating tribal lands. The SMP applies to all persons, landowners, companies, state and Federal land management agencies, and others who conduct silvicultural burning in Washington State. The SMP

does not apply to agricultural burning, outdoor burning that occurs on improved property, or tribal lands described in Section VI of this document.

For purposes of discussing the Washington SMP, prescribed fires fall into three main categories based on the size of the burn: “rule burns,” “small burns,” and “large burns.” The approval process for burns under the SMP<sup>2</sup> also varies based on whether the burn is a “multiple day burn” and whether the burn is conducted in an urban growth area.

“Rule burns” are generally no more than ten feet in diameter and are always limited to one fire at a time. They include burning of hand-built piles for recreational purposes, as well as fuels reduction, or other silvicultural purposes. Rule burns may also be restricted to no more than 4 feet in diameter depending on time of year and the county within which the burning occurs.<sup>3</sup> DNR has authority over rule burns, but no written permit or site-specific burn approval or decision is required under either the 1998 SMP or 2022 SMP for rule burns, provided the burns comply with minimum requirements for all burns listed in WAC 332-24-205<sup>4</sup> and the specific provisions for rule burns in WAC 332-24-211. No changes have been made to WAC 332-24-211, since EPA approved it into the Washington SIP in 2003. The “Scope” sections in both the 1998 SMP and 2022 SMP state that the SMP does not apply to burning done “by rule” (“rule burns”).

“Small burns” require site-specific written permits and are defined under the 2022 SMP as fires that will consume less than 100 tons of forest debris<sup>5</sup> in a 24-hour period. The size threshold is extended to 300 tons in “low-risk areas.” “Low risk areas” are generally remote areas and are defined by DNR using the criteria described in Appendix 10 of the 2022 SMP. Burners intending to conduct small burns are required to

<sup>2</sup> Commonly referred to as “Go/No-Go” and “Go/No-Go Decision” in the 2022 SMP.

<sup>3</sup> Size limits, including seasonal and county specific limitations, are described in Washington Administrative Code 332-24-211.

<sup>4</sup> WAC 332-24-205 applies to “all burning regulated by the department” and WAC 332-24-211 *Specific rules for small fires not requiring a written burning permit*. WAC 332-24-211 clarifies that the requirements contained therein are “[i]n addition to WAC 332-24-205” and sets forth the diameter and seasonal restrictions for so called “rule burns.”

<sup>5</sup> “Forest debris” includes forest slash, chips, and any other vegetative residue resulting from activities on forestland. This definition is from RCW 76.04.005(9), which is included in Appendix 7 of the 2022 SMP.

obtain a site-specific written permit.<sup>6</sup> DNR conditions such permits based on the proposed locations and may include specific instructions in the permits, such as limits on wind directions under which the burns may be conducted. Burners are required to follow all conditions in their burn permits. Prior to igniting a small burn, the burner must also call 1–800–323 BURN and follow the instructions that apply for the day and location of the burn being conducted. Burners cannot ignite small burns if an air quality episode is declared, or conditions of impaired air have been declared by Ecology or the local clean air authority as provided under RCW 70A.15.5140 and WAC 332–24–205(5). DNR may also suspend small burns on private and state lands due to high fire danger (Federal officials manage fire danger on Federal lands). In contrast to large burns, small burns conducted outside of urban growth areas do not require a site-specific burn decision just prior to the burn. Small burns within urban growth areas are not treated the same as other small burns but instead must undergo the same permitting process as large burns.

“Large burns” are defined as fires that will consume 100 tons or more in a 24-hour period (300 tons or more in low risk areas). Like small burns, large burns require site-specific permits; burners must follow all conditions in their burn permits; ignition is prohibited if an air quality episode is declared or conditions of impaired air have been declared by Ecology or the local clear air authority as provided under RCW 70A.15.5140 and WAC 332–24–205(5); and DNR may suspend large burns on private and state lands due to high fire danger (Federal officials manage fire danger on Federal lands). The distinction here from small burns outside of UGA’s is that prior to igniting a large burn outside of UGA’s, the burner must contact DNR directly and request authorization to ignite the large burn on a particular day. The SMP identifies eight specific burn approval criteria to be met before DNR decides whether ignition will be authorized for large burns (and small burns inside urban growth areas) and tasks DNR wildland fire management division managers with assessing the potential for smoke intrusions. To inform decisions, DNR utilizes numerous tools as well as site- and temporal-specific considerations, including, but not

limited to, current and forecasted weather conditions, air quality, fuel moisture, firing techniques, and availability of suppression forces.

“Multiple day burns” are subject to the same approval criteria used to approve large burns, regardless of burn size. Additional information and actions are required from burners before DNR will approve a multiple day burn. Those additional requirements are in the SMP in the *Approval Process for Multiple Day Burns* section and include, but are not limited to, notifying DNR at least three months before the proposed start of the burn, providing a rationale for why the burn cannot be accomplished in single day increments, providing communication and public notification plans, obtaining spot forecasts for each day of the burn, identifying what monitoring resources will be utilized, and participating in daily coordination calls.

Although the 2022 SMP burn approval criteria prohibit authorizing burns that would cause an exceedance of air quality standards, DNR’s goal as stated in the SMP is based on levels below the 35  $\mu\text{g}/\text{m}^3$  24-hour NAAQS for  $\text{PM}_{2.5}$ .<sup>7</sup> This is a new element of the 2022 SMP. Under the 2022 SMP, DNR now considers exceeding a  $\text{PM}_{2.5}$  level of 20.5  $\mu\text{g}/\text{m}^3$  (on a 3-hour rolling average) a smoke “intrusion” and unacceptable for purposes of the SMP.<sup>8</sup> The 2022 SMP sets forth new procedures to avoid, detect, and respond to smoke intrusions. These procedures include, but are not limited to:

- Incorporating consideration of potential intrusions when making burn decisions;
- Using available resources such as monitors and webcams to assess the level of smoke in potentially impacted communities;
- Reporting and documenting where and when smoke intrusions occur;
- Issuing health advisories as needed and collaborating with Ecology, Washington Department of Health, and local clean air authorities;
- Requiring burners to submit intrusion reports when DNR determines one has occurred; and
- Sharing all data and final intrusion reports with applicable partners and regulators, including Ecology, local clean air authorities, state and local health departments, and EPA.

In the 2022 SMP, DNR commits to reviewing the SMP every five years and

revising the plan or procedures as necessary as a result of that review. The SMP specifies that plan revisions will adopt the same review procedures used for the original adoption. The EPA notes that any revision to the SMP would not be part of the Washington SIP unless submitted to and approved by the EPA as provided in 42 U.S.C. 7410.

### III. Evaluation of Washington’s SIP Submittal

As with its previous SMP, Washington’s 2022 SMP submittal includes an extensive discussion of how the state implements its smoke management program as well as the statutes and regulations that apply to prescribed burning on forest land in Washington. Washington states that it revised its SMP to better regulate burning while reducing fuel loading, restore forest ecosystems, and reduce the risk of catastrophic wildfire while continuing to protect air quality. The revisions include changes to both the main body of the SMP as well as state statutes and regulations that apply to prescribed burning and are included in Appendix 7 of the submittal.<sup>9</sup>

The bulk of revisions in the 2022 SMP are non-substantive from a SIP approvability perspective and include reorganizing the order of SMP sections and content; updating wording for consistency and more current vernacular; and updating citations to reflect recodification of applicable statutes and rules. Washington also revised the SMP to add or clarify recordkeeping, reporting, and notification requirements for prescribed fires that may later qualify as an “exceptional event” under 40 CFR 50.14. This is also a non-substantive change to Washington’s SMP because EPA is not approving or disapproving this SMP as meeting the requirements of EPA’s exceptional event guidance.<sup>10</sup>

The 2022 SMP also contains several substantive revisions to the SMP. Those revisions affect burn decision timing, burn approval criteria, summer weekend burning, and burning in urban growth areas. Washington included in the submittal information to demonstrate that these revisions to the SMP will not interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement of Title I of the CAA. See 42 U.S.C. 7410(l). The most relevant

<sup>6</sup> WAC 332–24–201(4) requires a written permit for all burning other than “rule burns” which are outside the scope of the SMP. “Rule Burns” must meet all general rules in WAC 332–24–205 as well as specific additional conditions in WAC 332–24–211.

<sup>7</sup>  $\text{PM}_{2.5}$  is fine inhalable particles, with diameters that are generally 2.5 micrometers and smaller.

<sup>8</sup> See 2022 SMP, page 11, *Smoke Intrusions caused by any silvicultural burning section*, which is included in the docket for this action.

<sup>9</sup> The 1998 SMP included the applicable statutes and regulations in Appendix 15.

<sup>10</sup> See EPA’s 2019 *Exceptional Events Guidance: Prescribed Fire on Wildland that May Influence Ozone and Particulate Matter Concentrations*, page 20.

pollutants for Washington's analysis of visibility and interference with NAAQS attainment are  $PM_{2.5}$ ,  $PM_{10}$ , and ozone due to the nature of prescribed fire emissions and because EPA revised the  $PM_{2.5}$  and ozone NAAQS resulting in more stringent standards (78 FR 3085, January 15, 2013, and 80 FR 65292, October 26, 2015) since EPA last approved Washington's SMP.<sup>11</sup> The substantive changes to the 2022 SMP and the demonstration supporting the changes are discussed below.

#### *Burn Decision Timing*

Under the current approved 1998 SMP, "large burns" require that DNR issue a site-specific smoke management decision (permission to ignite) the morning of the day the fire is to be ignited. Under the 2022 SMP, if a burner submits a request to DNR by noon the "day prior" to the planned ignition, DNR must issue a decision by 4:00 p.m. that same day—about 15 hours earlier than what would be expected under the 1998 SMP. The result of this change is reliance on products, primarily meteorological forecasts and models that are produced earlier and, due to advances in science and technology, are more reliable than what would have been available when the 1998 SMP was created.

Washington's demonstration included a technical analysis<sup>12</sup> of forecast models used for day of versus day prior to ignition in the 2022 SMP. The technical analysis of the revised protocols shows no appreciable loss in forecast accuracy and indicates DNR would likely make the same operational burn decision regardless of whether the decision is rendered by 4:30 p.m. on the day prior to ignition or 8:00 a.m. on the day of ignition. The analysis also shows that, in the season when most burn decisions are made (fall), model runs the day prior to a burn have slightly smaller wind speed forecast errors than the day-of-burn model runs (wind speed is a significant factor for burn decisions).

<sup>11</sup> Washington states, and EPA agrees, that attainment and maintenance related to criteria pollutants other than PM and ozone are unlikely to be impacted by the changes to Washington's SMP. There are no nonattainment areas in Washington except for one sulfur dioxide nonattainment area that is small in area and encompasses an aluminum smelter facility and the area immediately adjacent to this facility. No discernible sulfur contributions to that area are expected to result from prescribed fire due to the low levels of sulfur in the woody biomass being burned.

<sup>12</sup> For more information see Appendix 1 of Washington's 2022 Smoke Management Plan Demonstration, 7. Appendix b.3 Appendices 1-4wTOC.pdf, which is included in the docket for this action.

This lends confidence that a status-quo or better burn decision will be made.

In addition, this burn decision timing change is not a complete departure from the procedure under the 1998 SMP. Burners seeking day prior burn decision approval under the 2022 SMP must submit their request by noon the day prior to ignition. Failure to do so may result in a burn decision on the day of ignition, instead of by 4:30 p.m. on the day prior to ignition. Burners may still request a burn decision on the planned day of ignition.

More importantly, there are protections in the burn approval process in the 2022 SMP based on air quality on the morning of ignition.<sup>13</sup> Specifically, the 2022 SMP states that on the day of the burn "If the burn was approved, the Smoke Management Section will verify weather conditions have not changed so much as to result in a violation of the Approval Criteria, by 7:30 a.m. If weather conditions have unexpectedly changed burners will be notified and advised that they may have to extinguish, and therefore are advised to not burn that location." This 2022 SMP weather verification requirement applies to large burns and all burns in urban growth areas, regardless of size.

For these reasons, including the technical demonstration supporting this change, we are proposing to find that attainment and maintenance of the NAAQS are unlikely to be affected by changes to the burn decision timing.

#### *Burn Approval Criteria*

As under the 1998 SMP, the 2022 SMP has eight approval criteria. All eight were updated to include state or Federal air quality regulation citations, which improve clarity for both regulators and the regulated community as compared to the 1998 SMP, which did not include citations. There are no substantive changes to approval criteria 3, 4, 6, and 7. Washington revised approval criteria 2 to reflect the specific statutory language authorizing the condition and the corresponding citation.<sup>14</sup>

The most substantive changes are to approval criteria 1, 5, and 8. Under the 1998 SMP, approval criteria 1 considered whether there was a likelihood of an "intrusion" of visible smoke, whereas under the 2022 SMP, this criterion was revised to the likelihood of an exceedance of state air

<sup>13</sup> See Appendix 1, Section 1.C. of the 2022 SMP which is included in the docket for this action.

<sup>14</sup> For a detailed analysis of the 1998 comparison to the 2022 approval criteria, see Appendix 3 of Washington's 2022 Smoke Management Plan Demonstration which is included in the docket for this action.

quality standards, which include the NAAQS, based on the requirement in RCW 70A.15.5140. The 2022 SMP also includes a new requirement for DNR and burners to monitor for and address intrusions of smoke due to silvicultural burning above 22.5  $\mu\text{g}/\text{m}^3$  of  $PM_{2.5}$ , a level significantly below the 35  $\mu\text{g}/\text{m}^3$   $PM_{2.5}$  NAAQS exceedance level. With this new requirement, combined with the revision to rely on the NAAQS exceedance level, criteria 1 is more protective in the 2022 SMP than the 1998 SMP. Approval criteria 5, previously a non-air quality specific reference to endangered species protections already in Washington State's Forest Practices Rule and Regulations, now prohibits burning in areas where Federal or State air quality standards are exceeded for any criteria pollutant, with limited exceptions for silvicultural burning to improve or maintain fire dependent ecosystems for rare plants or animals in specified areas. This is more protective than the existing criteria. Approval criteria 8 was revised by replacing language regarding smoke dispersion thresholds with criteria based on whether a declared stage of impaired air quality has been called or is likely to be called in the next 24 hours, based on coordination among DNR, Ecology, and local air agencies.<sup>15</sup> DNR still evaluates smoke dispersion under the 2022 SMP when assessing meteorological data, forecasting models, and permitting data to evaluate whether approval criteria 1, 2, and 3 have been met.<sup>16</sup> For these reasons, we are proposing to find that attainment and maintenance of the NAAQS are unlikely to be affected by the revisions to the eight approval criteria.

#### *Summer Weekend Burning*

The 1998 SMP contains a statewide prohibition on large burns from midnight Thursday through midnight Sunday between June 15 and October 1 and on the holidays of July Fourth and Labor Day. This prohibition is commonly referred to as the "summer weekend burning prohibition." The summer weekend burning prohibition only applies to large burns under the 1998 SMP. Moreover, all prescribed burns are, and will continue to be, severely limited for much of the period covered by the 1998 SMP summer weekend burning prohibition regardless of size. This is because prescribed burns during this period are frequently limited due to high occurrences of inconducive

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

weather, fuel conditions, preparedness levels and other safety constraints.<sup>17</sup>

Although the 2022 SMP does not retain the summer weekend burning prohibition, air quality protections are in place for the newly allowed burning because removing the prohibition only affects large burns, which require site-specific DNR smoke management decisions before ignition may occur.<sup>18</sup> The 2022 SMP requires DNR's smoke management decisions to be protective of air quality through the inclusion of the *Approval Criteria for Large Burns and All Burns within UGAs*. For these reasons, we are proposing to find that attainment and maintenance of the NAAQS are unlikely to be affected by removal of the summer weekend burning prohibition.

#### *Burning in Urban Growth Areas*

In 2019, the Washington State Legislature amended state law<sup>19</sup> to allow previously prohibited prescribed burning in urban growth areas. Unlike the summer weekend prohibition, the newly allowed burning is not burn size specific. The 2022 SMP includes allowances for prescribed "Urban Growth Area (UGA) Burns" and defines them as any "fire that takes place wholly or in part within a UGA as defined by the county."<sup>20</sup> Regardless of consumable tonnage, urban growth area burns require a site-specific DNR smoke management decision, a documented test fire and a spot weather forecast.<sup>21</sup> This site-specific decision follows the same approval criteria used for making site-specific decisions for large burns. The criteria include requirements that approval to ignite be denied if there is a likelihood of an air quality standard exceedance, as well as other air quality considerations.<sup>22</sup> For these reasons, we are proposing to find that attainment

and maintenance of the NAAQS are unlikely to be affected by the newly allowed urban growth area burning.

#### *Regional Haze and Visibility*

As discussed above, the 1998 SMP that is currently approved in the Washington SIP was approved as part of Washington's regional haze and visibility protection plan. 68 FR 34821 (June 11, 2003). EPA has recognized that prescribed fires conducted for the purpose of ecosystem health and public safety in accordance with basic smoke management practices are generally consistent with the goal of making reasonable progress toward natural visibility in mandatory class I areas because prescribed fires are most often conducted to improve ecosystem health and to reduce the risk of catastrophic wildfires, both of which can result in net beneficial impacts on visibility.<sup>23</sup> EPA proposes to find that none of the substantive changes to Washington's SMP discussed above interfere with reasonable progress towards natural visibility in mandatory class I areas, as laid out in Washington's regional haze and visibility SIP. As under the 1998 SMP, approval to burn will be denied if burning will not protect the public welfare, preserve visibility, protect scenic, aesthetic, historic, and cultural values, and prevent air pollution problems that interfere with the enjoyment of life, property, or cultural attractions or if burning will not comply with the Federal Clean Air Act regarding visibility protection of Federal Class I Areas.

#### **IV. EPA's Proposed Action**

We have reviewed the submitted SIP revisions and propose to find that the revisions meet the requirements of the CAA for approval. Based on our review of Washington's demonstration, we propose to conclude that the revisions to Washington's SIP will not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement of the CAA. Under CAA section 110(k), EPA is proposing to approve, and incorporate by reference, into the Washington SIP at 40 CFR part 52, subpart WW the following statutes and regulations in Appendix 7 to the 2022 SMP that provide the authority for implementation and enforcement of the plan, as well as the permits that authorize burning under the 2022 SMP:

- RCW 52.12.103, Burning Permits—Issuance—Contents (state effective March 27, 1984);
- RCW 52.12.104, Burning Permits—Duties of permittee (state effective March 27, 1984);
- RCW 76.04.005, Definitions. (1) "Additional fire hazard" (5) "Department protected lands" (9) "Forest debris" (11) "Forestland" (12) "Forestland owner," "owner of forestland," "landowner," or "owner" (13) "Forest material" (15) "Landowner operation" (18) "Participating landowner" (20) "Slash" (21) "Slash burning" (23) "Unimproved lands" (state effective July 24, 2015);
- RCW 76.04.205, Burning Permits—Civil Penalty (state effective July 25, 2021);
- RCW 70A.15.1030, Definitions. (21) "Silvicultural burning" (state effective June 11, 2020);
- RCW 70A.15.5000, Definition of "outdoor burning" (state effective July 26, 2020);
- RCW 70A.15.5010, (2) Outdoor burning—Fires prohibited—Exceptions (state effective June 11, 2020);
- RCW 70A.15.5020, Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning, except (3) (state effective June 11, 2020);
- RCW 70A.15.5120, Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction on silvicultural operations—Issuance—Fees (state effective June 11, 2020);
- RCW 70A.15.5130, Silvicultural forest burning—Reduce statewide emissions—Exemption—Monitoring program (state effective July 28, 2019);
- RCW 70A.15.5140, Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction on silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris (state effective June 11, 2020);
- RCW 70A.15.5150, Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits (state effective June 11, 2020);
- RCW 70A.15.5190, Outdoor burning allowed for managing storm or flood related debris (state effective June 11, 2020);
- WAC 332–24–201, Burning Permit Program—Requirements and Exceptions (state effective June 30, 1992);
- WAC 332–24–205, General rules—minimum requirements for all burning, except (13) (state effective November 22, 2019);

<sup>17</sup> See Appendix 2 of Washington's 2022 *Smoke Management Plan Demonstration*, which is included in the docket for this action in 7. *Appendix b.3 Appendices 1–4 wTOC.pdf*.

<sup>18</sup> See the subsection "Large burns and all burns in Urban Growth Areas" of the General Burning Requirements section in the 2022 SMP, which is included in the docket for this action in 5. *Appendix B.2.DNR SMP with Cover.pdf*.

<sup>19</sup> The Washington Legislature amended RCW 70.94.6514, subsequently recodified as RCW 70A.15.5020.

<sup>20</sup> As defined in the General Burning Requirements section in the 2022 SMP, which is included in the docket for this action in 5. *Appendix B.2.DNR SMP with Cover.pdf*.

<sup>21</sup> See the subsection "Urban Growth Area (UGA) Burns" of the General Burning Requirements section in the 2022 SMP, which is included in the docket for this action in 5. *Appendix B.2.DNR SMP with Cover.pdf*.

<sup>22</sup> EPA also notes that these burns would be subject to the limitations on "intrusion" of smoke exceeding a PM<sub>2.5</sub> level of 20.5 µg/m<sup>3</sup> (on a 3-hour rolling average), discussed in more detail above.

<sup>23</sup> See additional discussion in Protection of Visibility: Amendments to Requirements for State Plans, 82 FR 3078 (January 10, 2017).

- WAC 332–24–211, Specific rules for small fires not requiring a written burning permit (solely for the purpose of establishing the size threshold for burns covered by the Smoke Management Plan) (state effective June 30, 1992);

- WAC 332–24–217, Burning permit—penalty (state effective June 30, 1992);

- WAC 332–24–221, Specific rules for burning that requires a written burning permit (state effective February 1, 2012).

In addition, the EPA is proposing to approve, but not incorporate by reference, into the Washington SIP at 40 CFR part 52, subpart WW the Department of Natural Resources Smoke Management Plan, state effective May 10, 2022 (including all Appendices to such plan), as such plan applies to silvicultural burning regulated by DNR.

We note that, as provided in 40 CFR 52.2476 of the Washington SIP, any variance or exception to the 2022 SMP granted by DNR or Ecology must be submitted by Washington for approval to EPA in accordance with the requirements for revising SIPs in 40 CFR 51.104 and any such variance or exception does not modify the requirements of the federally approved Washington SIP until approved by EPA as a SIP revision.

#### V. Incorporation by Reference

In this document, EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the provisions described in Section IV of this preamble. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### VI. Statutory and Executive Orders Review

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 proposed 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 proposed 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 13563 (76 FR 3821, January 21, 2011);

- 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 application of those requirements would be inconsistent with the Clean Air Act; 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).

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. Consistent with EPA policy, the

EPA provided a consultation opportunity to potentially affected tribes in a letter dated May 24, 2022.

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

Environmental protection, Air pollution control, 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: March 13, 2023.

**Casey Sixkiller,**

*Regional Administrator, Region 10.*

[FR Doc. 2023–05462 Filed 3–22–23; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2015–0529; EPA–R05–OAR–2022–0685; FRL–10638–01–R5]

### Air Plan Approval; Wisconsin; Emissions Reporting and Infrastructure SIP Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin state implementation plan (SIP) revising air emissions reporting requirements codified in Chapter 438 of the Wisconsin Administrative Code. Additionally, EPA is proposing to approve a related infrastructure requirement under section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter (PM<sub>2.5</sub>) and 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

**DATES:** Comments must be received on or before April 24, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0529 or EPA–R05–OAR–2022–0685 at <https://www.regulations.gov>, or via email to [arra.sarah@epa.gov](mailto:arra.sarah@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any