

exclusion as an opportunity to evade the general mailing ban. If the mailer's claim to the exclusion is not appropriately credible or verifiable, then that claim may not be sufficient to deprive the Postal Service of reasonable cause to believe that the item is a nonmailable ENDS. Therefore, the proposed rule would authorize Postal Service personnel, upon reasonable cause to believe that a package contains cigarettes, smokeless tobacco, or ENDS, to treat the package as nonmailable unless the customer has affirmatively, credibly, and verifiably indicated that the relevant contents are, in fact, mailable.

Commenters are invited to offer their views on this proposed standard for reasonable cause in connection with ENDS-type items (or any other tobacco products). To the extent that commenters might propose alternative standards, commenters are advised to account specifically for the need to prevent abuse of the narrow exclusion of therapeutic and tobacco-cessation products; the asymmetry between mailers' and the Postal Service's access to information about the FDA-approval status and marketing of particular products; the Postal Service's limited resources; and its limited legal authority to open mailpieces that are sent in sealed mail classes without a warrant. 39 U.S.C. 404(c); 39 CFR 233.3(c)(3)–(4), (g)(1)–(2).

#### Applicability of Exceptions

The existing Noncontiguous States, Business/Regulatory Purposes, and Certain Individuals exceptions appear to be articulated in terms that can apply to ENDS as well as to cigarettes and smokeless tobacco. As such, the proposed use of the umbrella term "tobacco products" in the rules for each exception would automatically apply all such existing rules to ENDS. Commenters are nonetheless invited to identify any potential anomalies or other problems that this approach might create and to recommend solutions for such problems.

The Consumer Testing and Public Health exceptions apply only to "cigarettes," and not to smokeless tobacco. 18 U.S.C. 1716E(b)(5)–(6). As noted earlier, the Act technically includes ENDS within the relevant definition of "cigarettes." Without more, this would ordinarily indicate that these exceptions should apply to ENDS as well as other forms of "cigarettes." However, 18 U.S.C. 1716E(b)(5)(A)(ii) or (C)(ii)(III) confine the exceptions to packages containing "not more than 12 packs of cigarettes (240 cigarettes)." Congress did not amend these

provisions when it included ENDS, broadly defined, in the definition of "cigarettes," and neither the text of the Act nor its legislative history contains any guidance as to how these conditions should apply to ENDS.

ENDS are not packaged in such standard quantities as traditional cigarettes. ENDS rely on devices that can be used in an open-ended fashion, with potentially limitless quantities of liquid filled cartridges, whereas traditional cigarettes are self-contained, single-use items. Moreover, ENDS filler liquids can contain varying quantities of nicotine, or even no nicotine, whereas cigarettes uniformly contain nicotine. As such, it does not appear possible even to devise an administrable standard of equivalence that would allow "12 packs of cigarettes (240 cigarettes)" to be translated into some quantity of ENDS filler liquid, let alone ENDS products other than filler liquid.

Given the Act's broad definition of ENDS and the material differences between ENDS products and the types of products originally encompassed by the Consumer Testing and Public Health exceptions, it appears reasonable to construe the lack of accommodation for ENDS in the relevant statutory text to render those exceptions inapplicable to ENDS. To the extent that commenters believe that the Consumer Testing and Public Health exceptions should apply to ENDS, commenters are invited to recommend alternative standards consistent with Congress's apparent intent to limit the quantity of items mailed in packages under the exceptions. Commenters should explain in detail how any proposed alternative quantity limits are analogous to or otherwise consistent with those in 18 U.S.C. 1716E(b)(5)(A)(ii) or (C)(ii)(III), or why such consistency is not necessary. Commenters are also invited to furnish any relevant documentation or supporting information that may aid the Postal Service in evaluating their recommendations.

#### Effective Date of Eventual Final Rule

Particularities here merit a brief discussion of the timing of the eventual final rule, in the interest of providing stakeholders with advance information. Section 603(a) of the Act requires the Postal Service "promulgate regulations to clarify the applicability of the prohibition on mailing of cigarettes" to ENDS not later than 120 days after enactment (*i.e.*, April 26, 2021). Section 603(b) provides that the prohibition will apply to mailings of ENDS "on and after" the publication date of the final rule. In specifying this immediate effective date, Congress expressly

abrogated the standard 30-day notice period for a final rule under the Administrative Procedure Act (APA), which would otherwise apply to rulemakings concerning the mailability statute here. 5 U.S.C. 553(d), 559; 39 U.S.C. 3001(m). To the extent that this rulemaking concerns not only the mailing prohibition referenced in the Act, but also the application of exemptions from that prohibition, the APA permits those aspects of the eventual final rule likewise to take effect with less than 30 days' notice (*e.g.*, immediately upon publication). 5 U.S.C. 553(d)(1).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R10–OAR–2019–0599, FRL–10019–38–Region 10]

### Air Plan Approval; OR; Smoke Management Revision

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

**ACTION:** Proposed rule.

**SUMMARY:** Environmental Protection Agency (EPA) is proposing to approve Oregon State Implementation Plan (SIP) revisions submitted on November 3, 2014 and September 27, 2019. The submitted revisions incorporate by reference the most recent updates to Oregon's Smoke Management Plan. EPA is acting only on the most recent version of such regulations as the previous versions are no longer in effect as a matter of state law. EPA is also making technical corrections related to previous approvals of components of Oregon's SIP. EPA is proposing to determine that the changes are consistent with Clean Air Act requirements.

**DATES:** Comments must be received on or before March 22, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2019–0599, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of

which 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. 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:**

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**SUPPLEMENTARY INFORMATION:**

Throughout this document, wherever “we,” “us,” or “our” is used, it means EPA.

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**I. Background**

Each state has a State Implementation Plan (SIP) containing the control measures and strategies used 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. Oregon, and some other states, have adopted Smoke Management Plan SIPs to reduce emissions that contribute to visibility impairment. Wildfire has had a serious impact on Oregon during the past decade with many large-scale wildfires impacting the summer air quality in Oregon. The state anticipates that the Oregon Department of Forestry (ODF) will increase the use of prescribed fire to minimize the impacts of wildfire on air quality in response to this trend. Through the SMP, Oregon carefully manages prescribed fires to minimize smoke impacts to populated areas while

maximizing the use of prescribed fire as a forest management tool.

EPA first approved Oregon’s Smoke Management Plan and associated rules into the SIP in 1988 and has approved numerous revisions to the Plan over time.<sup>1</sup> Oregon requested additional revisions to smoke management rules contained in OAR Chapter 629–048, and ODF Directive 1–4–1–601 in a SIP submittal dated October 31, 2014 (received November 3, 2014, hereafter “2014 Submittal”). Before EPA took action on the 2014 Submittal, Oregon began additional rulemaking to revise portions of its smoke management rules. Oregon submitted those additional revisions to OAR 629–048 for SIP approval on September 24, 2019 (hereafter “2019 Submittal”). The 2019 Submittal includes revisions to regulations in Oregon’s 2014 Submittal on which the EPA has not yet taken action. In this action, EPA is proposing to approve only the most recent submitted version of such regulations because the previous versions of the regulations included in the 2014 Submittal are no longer in effect as a matter of state law.

**II. Oregon’s Smoke Management Program**

The ODF oversees prescribed forest burning in Oregon forest lands to decrease forest fuels and debris that pose increased fire risk, restore forest health and reduce the potential for major wildfires. ORS 477.013 directs ODF to develop and implement a Smoke Management Plan for prescribed forestry burning. To carry out this directive, ODF developed a Smoke Management Plan, which currently consists of rules under OAR 629–048 (previously under OAR 629–043) and the Operational Guidance for the Oregon Smoke Management Program in Directive 1–4–1–601. Oregon’s Smoke Management Plan applies to prescribed burning on federal, state and private forestland. The objectives of the Oregon Smoke

<sup>1</sup> On November 22, 1988, (53 FR 47188) EPA approved the Oregon Smoke Management Plan at Oregon Administrative Rule (OAR) Chapter 629, Division 43–043, and the Oregon Department of Forestry (ODF) “Operational Guidance for the Oregon Smoke Management Program” (Directive 1–4–1–601), into the Oregon SIP. On November 1, 2001, (66 FR 55105) EPA approved revisions to the Smoke Management Plan at OAR 629–43–043, and approved modifications to the ODF directive “Operational Guidance for the Oregon Smoke Management Program” into the Oregon SIP. Oregon requested EPA approve further changes to the Smoke Management Rule in a December 20, 2010, SIP submittal. In the 2010 submittal, OAR 629–048 (“Smoke Management”) replaced OAR 629–043 (“Smoke Management Plan”). EPA approved the 2010 submission on August 22, 2012 (77 FR 50611).

Management Plan (629–048–0010(4)) are to:

- (a) Minimize smoke emissions resulting from prescribed burning as described by ORS 477.552;
- (b) Provide maximum opportunity for essential forestland burning;
- (c) Protect public health by avoiding smoke intrusions;
- (d) Coordinate with other state smoke management programs;
- (e) Comply with state and federal air quality and visibility requirements; and
- (f) Promote the further development of techniques to minimize or reduce emissions by encouraging cost-effective utilization of forestland biomass, alternatives to burning and emission reduction techniques.

**A. 2014 Submittal Summary**

As discussed above, in 2014 Oregon revised its Smoke Management Plan and submitted it to EPA for approval into the SIP. Among the 2014 revisions, OAR 629–048–0130, Visibility Objectives, was strengthened by extending applicability to the full calendar year, as it was previously only applicable from July 1 to September 15. OAR 629–048–0130 is the only provision in the 2014 Submittal that remains in effect. All other portions of OAR 629–048 submitted in 2014 were further revised and included in the state’s subsequent 2019 Submittal. Since the remainder of the 2014 Submittal is no longer in effect as a matter of state law, EPA is not proposing to take action on any other component of Oregon’s 2014 Submittal.

**B. 2019 Submittal Summary**

In the 2019 Submittal, Oregon’s process for approving prescribed fires focuses heavily on forecasting weather conditions and their effects on smoke dispersal with new NAAQS-related considerations. Oregon’s previous approach included making single decisions for large tracts (approximately 150,000 contiguous acres, roughly the size of a ranger district) even though these large tracts can contain multiple airsheds and vastly different smoke dispersion conditions. The approach in the 2019 Submittal is more protective because ODF tailors burn decisions based on air quality and meteorological conditions within airsheds allowing for more accurate forecasts of smoke dispersion overall.

Oregon’s prescribed fires and resulting smoke are managed under the 2019 Submittal with no burning allowed within 35 miles of a smoke sensitive receptor area<sup>2</sup> (SSRA), if smoke or

<sup>2</sup> SSRAs are defined in OAR 629–048–0005(26) as areas designated for the highest level of protection under the Smoke Management Plan. They are designated by the State Board of Forestry, in

down-slope drainage is likely to impact the SSRA due to forecasted wind direction. Forecasts are produced 6 days a week by ODF during the prescribed fire season and provide instructions for burners to prevent smoke impacts such as wind-direction related limitations on burning near SSRAs. Oregon's stated main goal of burn instructions is to move smoke up and away from ground levels, which is why individual burn plan instructions are customized for the burn area and are subject to changes based on forecast meteorology and field conditions. ODF also communicates directly with individual burn bosses about fires planned near SSRAs.

The 2019 Submittal's SIP revisions do not increase prescribed fire authorization levels. The 2019 Submittal also retains the five program elements in Oregon's currently approved SIP: (1) Taking actions to minimize smoke emissions, (2) burning only during appropriate weather conditions in order to avoid smoke impacts in urban areas, (3) encouraging use of alternatives to fire, including a comprehensive reference manual of alternatives to prescribed fire, (4) requiring permits be obtained prior to burning, and (5) including a burn authorization process that involves the issuance of smoke management forecasts and burning instructions.<sup>3</sup>

Oregon's 2019 Submittal includes additional controls and contingencies to protect against impacts on air quality from prescribed burning to nonattainment areas, maintenance areas, and areas at risk for becoming nonattainment. The 2019 Submittal provisions call for consideration of all particulate matter (PM) emissions in the air when planning for prescribed burns whereas the current federally approved requirements only consider the PM emissions attributable to prescribed fires. The 2019 Submittal adds a definition for a "smoke incident" and re-defines a "smoke intrusion" in order to establish sub-NAAQS intrusion thresholds and a burn approval target not to exceed approximately 75% of the 24-hour PM<sub>2.5</sub> NAAQS. The 2019 SIP Submittal also establishes a NAAQS protective criterion for burn approvals through use of a one-hour threshold even though there is no NAAQS one-hour limit. The one-hour intrusion level, set at 70 µg/m<sup>3</sup>, and a 24-hour intrusion level set at 26 µg/m<sup>3</sup> level

(OAR 629-048-0005 (27)) are designed to protect the NAAQS (PM<sub>2.5</sub>). These criteria collectively enable ODF to dictate necessary modifications to burn volume or tonnage, or to withhold approval to burn considering weather conditions. Considered as a whole, the revisions contained in the 2019 Submittal strengthen the currently SIP-approved smoke management requirements.

Other notable modifications to the State's Smoke Management SIP include a process for developing community response plans and exemption requests, updates to Special Protection Zone<sup>4</sup> (SPZ) requirements that provide extra smoke management protection during winter months to communities with histories of exceeding federal air quality standards, and allowing the use of polyethylene sheeting on burn piles to facilitate rapid ignition and combustion of burn piles.

### III. Evaluation of Oregon's SIP Submittals

Approvals to revisions of SIPs are subject to the requirements of CAA section 110(l). Under CAA section 110(l), the Administrator may not approve a SIP revision "if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement of [the Act]."

The 2019 Submittal contains a 'weight of evidence' analysis<sup>5</sup> focused primarily on particulate matter impacts of the SMP revisions, as well as the implications of the revisions to the SMP on other NAAQS pollutants. The most relevant pollutants for this analysis are PM<sub>2.5</sub>, PM<sub>10</sub>, and ozone due to the nature of prescribed fire emissions and because EPA recently revised the PM<sub>2.5</sub> and Ozone NAAQS resulting in more stringent standards (78 FR 3085, January 15, 2013, and 80 FR 65292, October 26, 2015). EPA expects that attainment and maintenance related to criteria pollutants other than PM and ozone are unlikely to be impacted by the State's prescribed burning program. In addition, there are no nonattainment areas for ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, or lead in Oregon, nor has Oregon submitted any changes to regulatory limits in its

smoke management SIP provisions for these pollutants.

Prescribed burning does not generally occur in Oregon in summer months, the season when ozone values are expected to be the highest due to increased temperature and solar radiation, because those months generally have unfavorable smoke dispersion conditions<sup>6</sup> and fire safety concerns. For these reasons, we are proposing to find that attainment and maintenance of the Ozone NAAQS are unlikely to be affected by the provision submitted for approval.

We are also proposing to find that attainment and maintenance of the PM NAAQS are unlikely to be affected by the provisions in the 2019 Submittal for reasons discussed below. There are currently three PM nonattainment areas in Oregon: Klamath Falls for 2006 PM<sub>2.5</sub> and Oakridge for the 2006 PM<sub>2.5</sub> and 1987 PM<sub>10</sub> NAAQS. Determinations of Attainment by the Attainment Date and a Clean Data Determinations were published by EPA for these areas.<sup>7</sup> All areas in Oregon fall far below the PM<sub>10</sub> standard of 150 µg/m<sup>3</sup> and are attaining the PM<sub>10</sub> NAAQS. As discussed in the proposed findings of attainment for Klamath Falls (81 FR 36176, June 6, 2016) and Oakridge (82 FR 52686, November 14, 2017), residential wood combustion (RWC) in the cold, winter months during atmospheric inversions is the most significant source of PM<sub>2.5</sub> emissions responsible for elevated particulate matter in these areas. RWC emissions from certified and non-certified wood stoves, fireplaces, and pellet stoves are the most significant source of PM<sub>2.5</sub> emissions. In the Oakridge area, RWC accounts for about 86% of the base year direct PM<sub>2.5</sub> emissions and 84% of the projected emissions on worst case winter days. The primary control strategy for these areas is reducing emissions from residential wood combustion through a program to change-out uncertified woodstoves and an episodic woodstove curtailment program. The curtailment program restricts wood burning on "Red" advisory days. "Red" days are generally declared when PM<sub>2.5</sub> concentration is expected to be 25µg/m<sup>3</sup> (approx. 72% of the NAAQS) or higher.

Oregon established SPZs around Klamath Falls and Oakridge to provide additional protection from smoke in these areas. The Oregon Smoke Management Plan designates SPZs to

consultation with DEQ under OAR 629-048-0140, due to past history of smoke incidents, density of population or other special legal status related to visibility such as the Columbia River Gorge Scenic Area.

<sup>3</sup> EPA finalized the 2012 proposed approval on August 22, 2012, (77 FR 50611).

<sup>4</sup> Special Protection Zones have been established around certain communities requiring additional protection from particulates such as nonattainment or maintenance. Maps identifying these areas are identified in maps located within Department Directive 1-4-1-601, which is included in the docket. See OAR 629-048-0135 for details on requirements for these areas.

<sup>5</sup> A copy of the study is included in the Docket materials for this action. See: *Oregon SMP 110 Discussion*.

<sup>6</sup> See Section 2.6 of *Oregon SMP 110 Discussion*, which is included in the docket for this action.

<sup>7</sup> Klamath Falls 2006 PM<sub>2.5</sub>, 81 FR 36176, 6/6/2016; and Oakridge 2006 PM<sub>2.5</sub>, 85 FR 5537, 2/8/2018; Oakridge 1987 p.m.<sub>10</sub>, 66 FR 38947, 7/26/2001.

include extra restrictions regarding the use of prescribed fire during the problematic cold weather season when these areas can experience air stagnation events. Specifically, the Oregon SMP at OAR 629–048–0135 prohibits prescribed burning on “Red” woodstove days in the SPZ from December 1 through February 15 and provides additional cautionary requirements for prescribed burning in SPZs on non “Red” woodstove days from November 15 through February 15.

The 2014 and 2019 submittals establish more protective burn authorization levels than those in the previously SIP-approved SMP through the establishment of sub-NAAQS intrusion thresholds at OAR 629–048–0005(27).<sup>8</sup> For example, although there is no one hour NAAQS for PM<sub>2.5</sub>, ODEQ has established a 1-hr threshold of 70 µg/m<sup>3</sup>, further bound by the 24-hr threshold of 26 µg/m<sup>3</sup> (approximately 75% of the NAAQS) for determining whether or not a burn will be permitted. If PM<sub>2.5</sub> is at or above the sub-NAAQS thresholds, the 2019 Submittal provides that a prescribed burn would not be approved. Likewise, if the PM<sub>2.5</sub> is lower than the PM<sub>2.5</sub> thresholds, but additional smoke would likely cause an exceedance of the thresholds, the burn would also not be approved. The submitted revisions contain an exemption process from the 1-hr PM<sub>2.5</sub> intrusion threshold but the exemption imposes additional requirements and conditions (OAR 629–048–0180). The revised Smoke Management Plan also includes provisions for removing a community’s exemption from the 1-hour intrusion threshold if an area has had three or more 24-hour threshold exceedances in five years.<sup>9</sup> The revised plan also includes a provision for revoking the exemption if the SSRA is within one exceedance of a NAAQS violation. Also, SSRAs that are in a non-attainment with the NAAQS will not be eligible for an exemption (see 629–048–0180 (3)(e) and (f)). There is not an exemption process for the 24-hr PM<sub>2.5</sub> threshold of 26 µg/m<sup>3</sup>, therefore the revised Smoke Management Plan is

more protective than the 24-hr PM<sub>2.5</sub> NAAQS.

The proposed revisions also include new best burn practices and emissions reduction techniques at OAR 629–048–0210 allowing the burning of polyethylene coverings used to keep piles of slash and thinning debris dry. To determine the efficacy of polyethylene coverings, ODF and EPA’s Office of Research and Development contracted with a testing firm to conduct a study<sup>10</sup> of emissions from wet versus dry (covered and uncovered) piles. The study showed that wet piles burn slower and produce more emissions on a mass basis due to incomplete combustion than dry piles. In general, burning dry piles, even with polyethylene still in place, produces less criteria pollutant emissions than burning uncovered wet piles. Therefore, the revisions allowing for burning polyethylene to facilitate a reduction in emissions are more protective of the NAAQS.

Some additional changes in the 2014 and 2019 Submittals that EPA proposes to determine are either more protective than current SIP requirements or not expected to result in significant NAAQS impacts include expanding SPZ boundaries<sup>11</sup> to include the areas from which prescribed burning could cause an impact and changing SSRA<sup>12</sup> boundaries to better align with airshed boundaries. Prescribed burning is generally not expected to make significant contributions to the remaining criteria pollutants (Lead, CO, NO<sub>x</sub>, and SO<sub>2</sub>) due to a combination of factors. Monitored values in Oregon for these pollutants are well below the level of the NAAQS; wildfires are not known to be significant contributors of airborne Lead or SO<sub>2</sub>, and finally, prescribed burning in any one geographic area will be infrequent enough that it is not expected to create elevated concentrations that violate the NAAQS for any of these criteria pollutants. For additional information regarding these pollutants see *Oregon SMP 110 Discussion*, which is included in the docket materials for this action.

Oregon’s Smoke Management Plan revisions include OAR 629–048–0130 Visibility Objectives, which clearly state that it is the intent under the Smoke Management Plan to comply with Regional Haze requirements as

identified in the Oregon Regional Haze Plan. The revised Smoke Management Plan also enhances the Regional Haze Plan by incorporating practices to minimize visibility impacts to the Kalmiopsis Wilderness and Crater Lake National Park into the Smoke Management Plan.<sup>13</sup> Oregon’s 5-Year Progress Report approved May 17, 2019 (83 FR 22853), demonstrates that the long-term strategy and emission control measures in the existing Regional Haze SIP are sufficient to enable Oregon to meet all established reasonable progress goals. EPA proposes to find that Oregon’s smoke management revisions do not constitute a relaxation in Oregon’s Regional Haze SIP approved August 22, 2012 (77 FR 50611) because Oregon’s revisions do not alter limits on the quantity of light impairing pollutants emitted from prescribed burning and OAR 629–048(2) clearly states it is Oregon’s intent to operate their Smoke Management Plan in a manner consistent with the Oregon Regional Haze Plan.

#### IV. Technical Corrections

EPA is making technical corrections to provisions previously approved as revisions to the Oregon SIP pursuant to CAA 110(k)(6). In 2012 we approved (77 FR 50611) Oregon’s revised Smoke Management Plan at OAR 629–048–0001 through –0500 which replaced OAR 629–043–0043 but we failed to update 40 CFR 52.1970(c), Table 2. We are correcting Table 2 to reflect the 2012 approval by removing “OAR 629–43–043” and adding the portions of OAR 629–048 (state effective January 1, 2008) that were not revised by Oregon’s 2014 or 2019 Submittals.

We are correcting the identification of the Oregon SIP at 40 CFR part 52.1970(c), Table 2 by adding:

- OAR 629–048–0100, Regulated Areas (state effective 1/1/2008);
- OAR 629–048–0160, Bear Creek/Rogue River Valley SSRA (state effective 1/1/2008);
- OAR 629–048–0300, Registration of Intent to Burn (state effective 1/1/2008);
- OAR 629–048–0330, Emission Inventories (state effective 1/1/2008);
- OAR 629–048–0400, Coordination with Other Regulating Jurisdictions and for Other Pollutants (state effective 1/1/2008).

We are also making technical corrections to the Oregon SIP at 40 CFR part 52.1970(e), Table 5, Section 3, by revising the reference to Oregon’s

<sup>8</sup> In its response to comments during the state public process, Oregon acknowledged that the proposed 2019 SIP amendments have the effect of allowing for an estimated increase of prescribed fire use by 80%. However, EPA proposes to conclude the burn-specific authorization criteria based on ambient monitoring data, included in the proposed SIP amendment, are sufficient to ensure continued protection of the NAAQS.

<sup>9</sup> From 629–048–0180 (3)(d), “ODF and DEQ may revoke the exemption if there are repeated (three or more in five years) smoke intrusions that exceed the 24-hour average threshold or prescribed burning contributes to two or more NAAQS exceedances.”

<sup>10</sup> A copy of the study is included in the Docket materials for this action. See: Attachment G of *Oregon SMP 110 Discussion*.

<sup>11</sup> As described in OAR 629–048–0137 SPZ Contingency Plan Requirements.

<sup>12</sup> SSRAs are areas designated for the highest level of protection under the Smoke Management Plan (OAR 629–048–0005(26)).

<sup>13</sup> See our proposed approval of Oregon’s Regional Haze Progress Report (83 FR 11927, March 19, 2018) which was finalized May 17, 2018 (83 FR 33853).

Smoke Management Plan Administrative Rule to reflect the 2012 approval of OAR 629–048 and by removing the reference to OAR “629 43–043”.

## V. EPA’s Proposed Action

We have reviewed Oregon’s demonstration and propose to find that the revisions discussed above meet the requirements of the CAA. Based on our review of Oregon’s demonstration, we propose to conclude that the revisions to Oregon’s SIP will not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement of the Clean Air Act.

Under CAA section 110(k), EPA is proposing to approve, and incorporate by reference, the 2014 and 2019 submitted revisions into the Oregon SIP at 40 CFR part 52, subpart MM. As discussed above, Oregon’s 2014 and 2019 Submittals revised portions of OAR 629–048 and we are proposing to approve only the most recently submitted version of such regulations as previous versions are no longer in effect as a matter of state law.

Upon final approval, the Oregon SIP will include the addition of the following:

- OAR 629–048–0001, Title, Scope and Effective Dates (state effective 3/1/2019);
- OAR 629–048–0005, Definitions (state effective 3/1/2019);
- OAR 629–048–0010, Purpose (state effective 3/1/2019);
- OAR 629–048–0020, Necessity of Prescribed Burning (state effective 3/1/2019);
- OAR 629–048–0021, Necessity of Safeguarding Public Health (state effective 3/1/2019);
- OAR 629–048–0100, Regulated Areas (state effective 1/1/2008);
- OAR 629–048–0110, Characterization and Response to Smoke Incidents, Smoke Intrusions, and National Ambient Air Quality Standards (NAAQS) Exceedances (state effective 3/1/2019);
- OAR 629–048–0120, Air Quality Maintenance Objectives (state effective 3/1/2019);
- OAR 629–048–0130, Visibility Objectives (state effective 7/11/2014);
- OAR 629–048–0135, Special Protection Zone Requirements (state effective 3/1/2019);
- OAR 629–048–0137, SPZ Contingency Plan Requirements (state effective 3/1/2019);
- OAR 629–048–0140, Smoke Sensitive Receptor Areas (state effective 3/1/2019);
- OAR 629–048–0150, Criteria for Future Listing of Smoke Sensitive

Receptor Areas (state effective 3/1/2019);

- OAR 629–048–0160, Bear Creek/Rogue River Valley SSRA (state effective 1/1/2008);
- OAR 629–048–0180, Communication, Community Response Plans, and Exemption Requests (state effective 3/1/2019);
- OAR 629–048–0200, Regulated Areas (state effective 3/1/2019);
- OAR 629–048–0210, Best Burn Practices; Emission Reduction Techniques (state effective 3/1/2019);
- OAR 629–048–0220, Forecast Procedures (state effective 3/1/2019);
- OAR 629–048–0230, Burn Procedures (state effective 3/1/2019);
- OAR 629–048–0300, Registration of Intent to Burn (state effective 1/1/2008);
- OAR 629–048–0310, Fees for Prescribed burning (state effective 3/1/2019);
- OAR 629–048–0320, Reporting of Accomplishments (state effective 3/1/2019);
- OAR 629–048–0330, Emission Inventories (state effective 1/1/2008);
- OAR 629–048–0400, Coordination with Other Regulating Jurisdictions and for Other Pollutants (state effective 1/1/2008);
- OAR 629–048–0450, Periodic Evaluation and Adaptive Management (state effective 3/1/2019);
- OAR 629–048–0500, Enforcement (state effective 3/1/2019);
- ORS 477.013, Smoke Management Plan; rules (state effective 3/1/2019); and
- Oregon Department of Forestry Directive 1–4–1–601, Operational Guidance for the Oregon Smoke Management Program (state effective 3/1/2019).

Pursuant to 110(k)(6), we are also making corrections to the regulatory text that includes incorporation by reference by removing “OAR 629–43–043” as discussed in Section IV. Upon final approval, the following regulations will be removed from 40 CFR 52.1970(c), Table 2:

- OAR 629–043–0043, Smoke Management Plan (state effective 4/13/1987); and the corresponding cross-reference will be removed from 40 CFR 52.1970(e), Table 5, Section 3.

## VI. 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 V of this preamble. Also, in this document, EPA is proposing to remove the

incorporation by reference of “OAR 629–43–043” as described in Section IV. 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).

## VII. 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, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 the requirements would be inconsistent with the Clean Air Act; 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).

In addition, this proposed action does not 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).

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter.

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

Dated: February 9, 2021.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 2021-03036 Filed 2-18-21; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2020-0477; FRL-10016-38-Region 9]

#### Air Plan Approval; California; Placer County Air Pollution Control District; Open Burning Rules

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of oxides of nitrogen (NO<sub>x</sub>) and particulate matter (PM) from open burning. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before March 22, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2020-0477 at <https://www.regulations.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). 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For 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>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### FOR FURTHER INFORMATION CONTACT:

Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at [Gong.Kevin@epa.gov](mailto:Gong.Kevin@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to the EPA.

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#### I. The State's Submittal

##### A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
PCAPCD .....	301	Nonagricultural Burning Smoke Management .....	08/09/2018	11/21/2018
PCAPCD .....	302	Agricultural Waste Burning Smoke Management .....	08/09/2018	11/21/2018
PCAPCD .....	305	Residential Allowable Burning .....	10/11/2018	01/31/2019

On May 21, 2019, the submittal for PCAPCD Rules 301 and 302 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review. On July 31, 2019, the submittal for PCAPCD Rule 305 was also deemed by operation of law to meet the criteria.

#### B. Are there other versions of these rules?

We approved earlier versions of Rules 301, 302, and 305 into the SIP on

January 31, 2013 (78 FR 6736). If we take final action to approve the submitted versions of Rules 301, 302, and 305 that are the subject of this rulemaking, they will replace the previously approved versions of these rules in the SIP.

#### C. What is the purpose of the rule revisions?

Emissions of NO<sub>x</sub> contribute to the production of ground-level ozone, smog and PM, which harm human health and the environment. Section 110(a) of the

CAA requires states to submit regulations that control NO<sub>x</sub> emissions. Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM<sub>2.5</sub>) and PM equal to or less than 10 microns in diameter (PM<sub>10</sub>), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit