



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2020-0108: FRL-10006-82-Region 10]

Air Plan Approval; Washington; Northwest Clean Air Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Washington State Implementation Plan (SIP) that were submitted by the Washington Department of Ecology (Ecology) in coordination with the Northwest Clean Air Agency (NWCAA). This proposed revision would update certain NWCAA regulations currently in the SIP, remove obsolete regulations, and approve a subset of updated Ecology regulations to apply in NWCAA's jurisdiction.

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2020-0108 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>.

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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:

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I. Background for Proposed Action

On January 27, 2014, Ecology submitted revisions to update the general air quality regulations contained in Chapter 173-400 Washington Administrative Code (WAC), which the EPA approved in three phases on October 3, 2014 (79 FR 59653), November 7, 2014 (79 FR

66291), and April 29, 2015 (80 FR 23721).¹ Under the revised applicability provisions of WAC 173-400-020 approved into the SIP on October 3, 2014, the regulations contained in Chapter 173-400 WAC apply statewide, “...except for specific subsections where a local authority has adopted and implemented corresponding local rules that apply only to sources subject to local jurisdiction as provided under Revised Code of Washington (RCW) 70.94.141 and 70.94.331.”² Therefore, the EPA’s approval of Ecology’s January 2014 submittal applied only to geographic areas and source categories under Ecology’s direct jurisdiction. We stated that we would address the revised Chapter 173-400 WAC regulations as they apply to local clean air agency jurisdictions on a case-by-case basis in separate, future actions.

On February 6, 2020, the Director of Ecology, as the Governor’s designee for SIP revisions, submitted a request to update the air quality regulations in the SIP as they apply to NWCAA’s jurisdiction in 40 CFR part 52.2470(c), *Table 5 - Additional Regulations Approved for the Northwest Clean Air Agency (NWCAA) Jurisdiction*. NWCAA’s jurisdiction consists of Island, Skagit and Whatcom counties, excluding certain facilities discussed in section IV.D. *Scope of Proposed Action*. NWCAA’s jurisdiction also excludes Indian reservation land or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

Appendices A and A.1 of the February 6, 2020, SIP revision show how the submitted regulatory updates would apply to NWCAA’s jurisdiction. These revisions can be summarized in two categories. The first category consists of updates to the NWCAA regulations currently in the SIP or adopted since the last SIP approval. These updated provisions can apply in lieu of, or

¹ In subsequent actions on September 29, 2016 (81 FR 66823) and October 6, 2016 (81 FR 69385) we made minor corrections to our previous approval of Chapter 173-400 WAC and approved revised WAC provisions that incorporated by reference the most recent changes to the Federal regulations. Additionally, on December 4, 2019 (84 FR 66363) we proposed to approve additional changes to Chapter 173-400 WAC state effective September 16, 2018 and November 25, 2018, which we are in the processes of finalizing.

² For a more detailed discussion see page 39352 of the EPA’s proposed approval of WAC 173-400-020 (79 FR 39351, July 10, 2014).

serve as a supplement to, the statewide Chapter 173-400 WAC provisions, as shown in Table 1. The second category consists of Chapter 173-400 WAC provisions or subsections that do not have direct corollaries under the NWCAA regulations. In these cases, Ecology and NWCAA requested that the EPA revise the SIP to include the most recently approved updates to Chapter 173-400 WAC to apply in NWCAA's jurisdiction, as shown in Table 2. The EPA's proposed approval of the Chapter 173-400 WAC provisions for NWCAA's jurisdiction would be subject to the same exceptions that apply to Ecology's direct jurisdiction. For example, as part of the January 2014 submittal of Chapter 173-400 WAC, Ecology did not submit for approval those provisions related to the regulation of toxic air pollutants or odor because such provisions are outside the scope of SIPs under Clean Air Act (CAA) section 110.

II. Changes to the NWCAA Regulations

The EPA last approved updates to the NWCAA regulations on February 22, 1995 (60 FR 9778) and October 24, 1995 (60 FR 54439). In this proposed action, NWCAA and Ecology requested updating parts of the SIP with the revised NWCAA regulations described below.

A. General Provisions

The NWCAA general provisions approved into the SIP are contained in sections 100 through 180. Many of the changes to the NWCAA general provisions since the EPA's last approval are minor in nature, including incorporating the name change from the "Northwest Air Pollution Authority" to the "Northwest Clean Air Agency." Other changes include removing outdated provisions, consolidating sections, or revisions to more closely mirror the WAC. A full redline / strikeout comparison of the 1995-approved NWCAA general provisions to the most recent set of revisions submitted for approval is included in the docket for this action and will not be described in detail here. We note that NWCAA did not submit all sections of the general

provisions. For example, NWCAA did not submit replacements for sections 121 *Orders*, 150 *Pollutant Disclosure – Reporting by Air Contaminant Sources*, and 180 *Sampling and Analytical Methods/References* (replaced by section 367, not submitted as part of this SIP revision).

NWCAA also did not submit section 155 *State Environmental Policy Act* because it is outside the scope of SIPs under CAA section 110.

The most significant change with respect to the NWCAA general provisions is consistent with several recent approvals regarding the “Regulations Approved but Not Incorporated by Reference” portion of the SIP.³ The EPA reviews and approves state and local clean air agency submissions to ensure they provide adequate enforcement authority and other general authority to implement and enforce the SIP. However, regulations describing such agency enforcement and other general authority are generally not incorporated by reference to avoid potential conflict with the EPA’s independent authorities. In our previous 1995 approvals, we included many of NWCAA’s enforcement and other general authority provisions in 40 CFR 52.2470(c), the regulations incorporated by reference. We are proposing to revise the SIP and approve the most recent updates to these sections for inclusion in 40 CFR 52.2470(e), *Table 1 – Approved but Not Incorporated by Reference Regulations*. The NWCAA general provisions proposed for approval, but not incorporation by reference are listed below in section IV.B *Approved but Not Incorporated by Reference Regulations*. We note that sections 100 *Name of Agency*, 101 *Short Title*, and 102 *Policy*, remain in 40 CFR 52.2470(c), the regulations incorporated by reference, and we propose to approve the most recent updates to these sections, as shown in Table 1.

B. Definitions

³ See Benton Clean Air Agency (80 FR 71695, November 17, 2015), Energy Facility Site Evaluation Council (82 FR 24533, May 30, 2017), and Southwest Clean Air Agency (82 FR 17139, April 10, 2017).

Since the EPA's last approval in 1995, NWCAA revised section 200 *Definitions* to more closely align with the WAC. For example, definitions related to outdoor burning were moved to the standalone outdoor burning regulations in section 502 similar to the structure of WAC 173-425-030. Other NWCAA definitions were revised to more closely parallel WAC 173-400-030, the definition section for the state general air quality regulations (79 FR 59653, October 3, 2014). Other definitions, previously approved into the SIP under section 580 *Volatile Organic Compound Control*, were consolidated into the general definition section with minor wording revisions. A redline / strikeout comparison of the NWCAA definitions to the SIP-approved WAC definitions, or the prior 1995 SIP-approved NWCAA definition if there is not a WAC definition, is included in the docket for this action and will not be described in detail here. We note that consistent with our approval of Chapter 173-400 WAC, NWCAA did not submit definitions related to toxic air pollutants or odors, because they are outside the scope of SIPs under CAA section 110. We also note that NWCAA and Ecology requested that section 200 generally replace WAC 173-400-030 for sources subject to NWCAA's jurisdiction. However, if a definition does not appear in section 200 the WAC 173-400-030 definition shall apply. This applies mainly to definitions related to nonattainment new source review, visibility permitting, and the Prevention of Significant Deterioration Program described in the next section, because NWCAA relies primarily on the WAC for those provisions.

C. Control Procedures

NWCAA and Ecology submitted sections 300 *New Source Review*, 305 *Public Involvement*, 320 *Registration Program*, and 321 *Exemptions from Registration* for approval into the SIP, with certain exceptions described below. These sections consolidate and replace the 1995 SIP-approved sections 300, 301 (consolidated into 300), 302 (consolidated into 300), 303,

310 (replaced by 320), 320, 321 (replaced by 320), 322 (renumbered to 321), and 323 (replaced by 320). The revised versions more closely align the NWCAA new source review program and registration program with the WAC. A crosswalk comparing NWCAA sections to the SIP-approved WAC corollaries is included in the docket for this action.

Generally, the NWCAA new source review program in section 300 replaces the following WAC provisions: 173-400-036 *Relocation of Portable Sources*, 173-400-110 *New Source Review (NSR) for Sources and Portable Sources*, 173-400-111 *Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources*, 173-400-113 *New Sources in Attainment or Unclassifiable Areas - Review for Compliance with Regulations*, and 173-400-560 *General Order of Approval* for facilities subject to NWCAA's permitting jurisdiction. As discussed in more detail in section IV.D *Scope of Proposed Action*, Ecology and the Energy Facility Site Evaluation Council (EFSEC) have direct permitting authority for certain source categories, including the Prevention of Significant Deterioration (PSD) new source review permitting program for major stationary sources in attainment and unclassifiable areas. In these cases, the WAC would continue to apply to permits issued under Ecology or EFSEC's direct authority. NWCAA retains citations to the PSD program, implemented under WAC 173-400-700 through 173-400-750, for purposes such as working on permit coordination with Ecology, enforcing existing PSD permit conditions not yet incorporated into Title V permits, and determining violations for inspected facilities that failed to obtain the necessary PSD permits. However, NWCAA is not requesting, and the EPA is not proposing to approve, the authority to issue PSD permits under WAC 173-400-700 through 173-400-750 for NWCAA's direct permitting jurisdiction.

With respect to stationary sources in nonattainment areas, NWCAA does not currently have, and has never had, a designated nonattainment area. For this reason, NWCAA has not developed independent local agency nonattainment new source review (NNSR) rules. In the event that a nonattainment area is designated in the future, NWCAA retains the following WAC provisions for implementation of NNSR, and the accompanying visibility permitting requirements for major stationary sources: WAC 173-400-112 *Requirements for New Sources in Nonattainment Areas - Review for Compliance with Regulations*, WAC 173-400-117 *Special Protection Requirements for Federal Class I Areas*, 173-400-131 *Issuance of Emission Reduction Credits*, 173-400-136 *Use of Emission Reduction Credits (ERC)*, as well as the major stationary source NNSR provisions contained in WAC 173-400-800 through 173-400-860.⁴ Although most of the NNSR requirements are self-contained in WAC provisions cited above, certain subsections of WAC 173-400-111 and 173-400-113, noted in Table 2, relate to nonattainment areas and are also retained to apply to NWCAA's permitting jurisdiction, but only for purposes of implementing NNSR, as needed.

The crosswalk included in the docket also contains a comparison of section 305 *Public Involvement* to the WAC provisions it replaces for actions taken by NWCAA: WAC 173-400-171 *Public Notice and Opportunity for Public Comment* and WAC 173-400-175 *Public*

⁴ The EPA approved WAC 173-400-800 through 173-400-860 for Ecology's direct permitting jurisdiction on November 7, 2014 (79 FR 59653), with minor revisions to reflect updated Federal citations on October 6, 2016 (81 FR 69385). In connection with our November 7, 2014 approval, we reviewed WAC 173-400-800 through 173-400-860 pursuant to the Federal regulatory requirements in existence at that time, and discussed the fact that the EPA's 2008 PM_{2.5} New Source Review Rule (73 FR 28321, May 16, 2008), had been remanded to the EPA by the U.S. Court of Appeals for the District of Columbia Circuit. See 79 FR 43345, 43347 (July 25, 2014) (proposed action); 79 FR 59653 (final action). EPA's 2008 PM_{2.5} New Source Review Rule has since been replaced by a revised implementation rule published August 24, 2016, which imposed additional NNSR requirements for PM_{2.5} nonattainment areas (81 FR 58010). Because there are currently no nonattainment areas within NWCAA's jurisdiction or Washington State for any criteria pollutant, including PM_{2.5}, the EPA did not review WAC 173-400-800 through 173-400-860 for consistency with the newly revised PM_{2.5} implementation rule; nor does Ecology or NWCAA have an obligation to submit rule revisions to address the 2016 PM_{2.5} implementation rule at this time. However, we note that the Federal major stationary source NNSR requirements remain unchanged for all other criteria pollutants since our review and approval of WAC 173-400-800 through 173-400-860.

Information. Although organized differently, the requirements of section 305 are substantively the same as the SIP-approved WAC provisions. This includes NWCAA's incorporation of the e-notice and e-access provisions promulgated by the EPA on October 18, 2016 (81 FR 71613).

The docket also contains a review of NWCAA's revised registration program. Since the last SIP approval, NWCAA changed the registration program from an exemption-based approach to a source category approach similar to WAC 173-400-100. We note that Ecology chose to remove WAC 173-400-100 from the SIP, because it did not impose air pollution control requirements on sources or implement or enforce Federal standards. See the discussion in our proposal, 79 FR 39351, at page 39354 (July 10, 2014). However, NWCAA is retaining the registration program in the SIP because it implements certain requirements such as emissions reporting.

Section 303 *Work Done Without an Approval* replaces the section 303 *Notice of Completion – Notice of Violation* previously approved into the SIP. This provision is an enforcement mechanism to address facilities that construct a new source or modify an existing source without a final order of approval from NWCAA. Because section 303 is an enforcement authority, NWCAA and Ecology requested that this provision be moved to the approved, but not incorporated by reference section of the SIP. The EPA is proposing to approve this request.

The EPA is also proposing to approve and incorporate by reference sections 300, 305, 320, and 321, with certain exceptions. As described in the supporting documents for this proposed action, NWCAA and Ecology did not submit subsections 300.8(C), 300.25, 320.3, and 321.3 because they are either not required SIP elements or not appropriate for SIP approval. We also note, NWCAA and Ecology did not submit, and the EPA is not proposing to approve, any provisions related to the regulation of Toxic Air Pollutants consistent with our action on Chapter

173-400 WAC. See the discussion in our proposed approval, 79 FR 39351, 39356 (July 10, 2014).

D. Standards

Sections 400 through 424 of the current NWCAA SIP are outdated ambient air quality standards, adopted in 1993. NWCAA and Ecology requested removal of these outdated standards to rely on the statewide Chapter 173-476 WAC *Ambient Air Quality Standards* already applicable in NWCAA's jurisdiction. We most recently updated Chapter 173-476 WAC in the SIP on October 6, 2016 (81 FR 69386). A review of the outdated and subsequently repealed NWCAA standards, the changes to the Federal standards, and the incorporation of all current Federal standards into Chapter 173-476 WAC is included in the docket for this action. The EPA is proposing to approve NWCAA and Ecology's request to remove the outdated NWCAA standards contained in sections 400 through 424.

III. Application of WAC 173-400-020

As previously discussed, a local clean air agency generally has the authority under WAC 173-400-020 to establish local regulations to supplement, or act in lieu of, the statewide Chapter 173-400 WAC provisions for sources within its jurisdiction. This approach is consistent with our previous SIP actions for Benton Clean Air Agency (80 FR 71695, November 17, 2015) and Southwest Clean Air Agency (82 FR 17136, April 10, 2017). As discussed above and in the supporting documents for this action, NWCAA and Ecology requested that the EPA approve and incorporate by reference: section 102 *Policy* to replace WAC 173-400-010; section 200 *Definitions* to replace WAC 173-400-030 (except for terms not defined in section 200); section 300 New Source Review to replace WAC 173-400-036, 173-400-110, 173-400-111, 173-400-113, and 173-400-560 (except certain subsections described above related to nonattainment areas

or the associated visibility permitting for facilities subject to major stationary source NNSR); and section 305 Public Involvement to replace WAC 173-400-171 and WAC 173-400-175 for actions under NWCAA’s jurisdiction.

As part of the February 6, 2020, submittal, NWCAA and Ecology also identified Chapter 173-400 WAC provisions that do not have a direct corollary in the NWCAA regulations. For these provisions NWCAA and Ecology requested that the EPA update these Chapter 173-400 WAC citations to the most recently EPA-approved version of those sections. The EPA is proposing to approve this request.

IV. The EPA’s Proposed Action

A. Regulations to Approve and Incorporate by Reference into the SIP

The EPA is proposing to approve and incorporate by reference into the Washington SIP at 40 CFR 52.2470(c), *Table 5 – Additional Regulations Approved for the Northwest Clean Air Agency (NWCAA) Jurisdiction*, the NWCAA and Ecology regulations listed in Tables 1 and 2 for sources under NWCAA’s jurisdiction.

Table 1: Northwest Clean Air Agency (NWCAA) Regulations for Proposed Approval and Incorporation by Reference

State/Local Citation	Title/Subject	State/Local Effective Date	Explanation
100	Name of Agency	08/21/05	
101	Short Title	08/21/05	
102	Policy	08/21/05	Except provisions outside the scope of CAA section 110. Replaces WAC 173-400-010.
200	Definitions	05/12/19	Except the definitions Toxic Air Pollutant, Odor, and Odor Source. Generally replaces WAC 173-400-030. However, for definitions not included in section 200, the WAC 173-400-030 definitions in the table below shall apply.

300	New Source Review	05/12/19	Except subsections 300.8(C), 300.25, or any provisions related to the regulation of Toxic Air Pollutants. Replaces WAC 173-400-036, 173-400-110, 173-400-111, 173-400-113, and 173-400-560, except certain subsections of WAC 173-400-111 and 173-400-113 listed in the table below.
305	Public Involvement	05/12/19	Except provisions related to the regulation of Toxic Air Pollutants. Replaces WAC 173-400-171 and WAC 173-400-175, except subsection 173-400-171(6)(b).
320	Registration Program	5/12/19	Except subsection 320.3 and provisions related to the regulation of Toxic Air Pollutants or odor.
321	Exemptions from Registration	5/12/19	Except subsection 321.3.

Table 2 shows the updated Chapter 173-400 WAC provisions, or subsections, that NWCAA and Ecology requested apply to the SIP for NWCAA’s jurisdiction. We note that many of the exclusions listed below are identical to the exclusions for Ecology’s direct jurisdiction. We also note that NWCAA and Ecology did not submit updates to all the Chapter 173-400 WAC provisions. For these remaining provisions we will retain our prior approval of the WAC (60 FR 28726, June 2, 1995).

Table 2: Washington Department of Ecology Regulations for Proposed Approval and Incorporation by Reference

State/Local Citation	Title/Subject	State/Local Effective Date	Explanation
Chapter 173-400 WAC, General Regulations for Air Pollution Sources.			
173-400-020	Applicability	12/29/12	
173-400-025	Adoption of Federal Rules	9/16/18	Only as it applies to cross references in the WAC.
173-400-030	Definitions	9/16/18	Except: 173-400-030(6);

			173-400-030(32); 173-400-030(38); 173-400-030(45); 173-400-030(83); 173-400-030(89); 173-400-030(96); 173-400-030(97); 173-400-030(100); 173-400-030(103); 173-400-030(104); or any definition included in NWCAA section 200.
173-400-050	Emission Standards for Combustion and Incineration Units	9/16/18	Except: 173-400-050(2); 173-400-050(4); 173-400-050(5); 173-400-050(6).
173-400-060	Emission Standards for General Process Units	11/25/18	
173-400-091	Voluntary Limits on Emissions	4/1/11	9/20/93 version continues to be approved under the authority of CAA Section 112(l) with respect to Section 112 hazardous air pollutants. See 60 FR 28726 (June 2, 1995).
173-400-111	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources	7/1/16	Only subsections (1)(c), (1)(d), (5)(b), and (7)(b), otherwise NWCAA section 300 applies.
173-400-112	Requirements for New Sources in Nonattainment Areas—Review for Compliance with Regulations	12/29/12	The cross reference to WAC 173-400-113(3) is interpreted to be NWCAA section 300.9(B)(3).
173-400-113	New Sources in Attainment or Unclassifiable Areas— Review for Compliance with Regulations	12/29/12	Only subsection (4), otherwise NWCAA section 300 applies.
173-400-117	Special Protection Requirements for Federal Class I Areas	12/29/12	
173-400-118	Designation of Class I, II, and III Areas	12/29/12	
173-400-131	Issuance of Emission Reduction Credits	4/1/11	

173-400-136	Use of Emission Reduction Credits (ERC)	4/1/11	
173-400-151	Retrofit Requirements for Visibility Protection	2/10/05	
173-400-171	Public Notice and Opportunity for Public Comment	9/16/18	Only subsection (6)(b), otherwise NWCAA section 305 applies.
173-400-200	Creditable Stack Height and Dispersion Techniques	2/10/05	
173-400-800	Major Stationary Source and Major Modification in a Nonattainment Area	4/1/11	EPA did not review WAC 173-400-800 through 860 for consistency with the August 24, 2016 PM _{2.5} implementation rule (81 FR 58010); nor does NWCAA have an obligation to submit rule revisions to address the 2016 PM _{2.5} implementation rule at this time.
173-400-810	Major Stationary Source and Major Modification Definitions	7/1/16	
173-400-820	Determining if a New Stationary Source or Modification to a Stationary Source is Subject to these Requirements	12/29/12	
173-400-830	Permitting Requirements	7/1/16	
173-400-840	Emission Offset Requirements	7/1/16	
173-400-850	Actual Emissions Plantwide Applicability Limitation (PAL)	7/1/16	
173-400-860	Public Involvement Procedures	4/1/11	

B. Approved but Not Incorporated by Reference Regulations

As discussed above, we are proposing to approve the following updates to NWCAA's general provisions for inclusion in 40 CFR 52.2470(e), *Table 1 – Approved but Not Incorporated by Reference Regulations: 103 Duties and Powers, 105 Separability, 110 Investigation and*

Studies, 111 Interference or Obstruction, 112 False and Misleading Oral Statement: Unlawful Reproduction or Alteration of Documents, 113 Service of Notice, 114 Confidential Information, 120 Hearings, 123 Appeal of Orders, 124 Display of Orders, Certificates and Other Notices: Removal or Mutilation Prohibited, 131 Notice to Violators, 132 Criminal Penalty, 133 Civil Penalty, 134 Restraining Orders – Injunction, 135 Assurance of Discontinuance, and 303 Work Done Without an Approval.

C. Regulations to Remove from the SIP

NWCAA and Ecology's February 6, 2020, submittal included a request to remove several obsolete provisions from the SIP and to remove other provisions that are not required SIP elements under CAA section 110. As discussed in the supporting analysis included in the docket for this action, NWCAA and Ecology requested removal of the following general provision sections previously approved into the SIP in 1995: 104 *Adoption of State and Federal Laws and Rules* (not a required SIP element), 106 *Public Records* (replaced by section 305.7), 122 *Appeals from Orders or Violations* (consolidated into section 123), 130 *Citations – Notices* (consolidated into section 131), 140 *Reporting by Government Agencies* (subsumed by the new source review requirements), and 145 *Motor Vehicle Owner Responsibility* (not a required SIP element). As noted in the control procedures discussion, the former SIP-approved sections 301 and 302 were consolidated into Section 300 *New Source Review* and former sections 310, 322, and 323 were consolidated into the registration program in sections 320 and 321. We are proposing to approve NWCAA and Ecology's request to remove these outdated provisions from the SIP and to remove the outdated ambient air quality standards in sections 400 through 424, in order to rely on the current, statewide standards in Chapter 173-476 WAC. Lastly, we are proposing to remove from

the SIP any formerly approved WAC provisions which are replaced by local agency corollaries discussed above for facilities or actions subject to NWCAA's jurisdiction.

D. Scope of Proposed Action

This proposed revision to the SIP applies specifically to the NWCAA jurisdiction incorporated into the SIP at 40 CFR 52.2470(c) – Table 5. As discussed in our October 3, 2014 action, local air agency jurisdiction in Washington is generally defined on a geographic basis; however, there are exceptions (79 FR 59653, at page 59654). By statute, NWCAA does not have authority for sources under the jurisdiction of EFSEC. See Revised Code of Washington Chapter 80.50. Under the applicability provisions of WAC 173-405-012, 173-410-012, and 173-415-012, NWCAA also does not have jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. For these sources, Ecology retains statewide, direct jurisdiction. Ecology and EFSEC also retain statewide, direct jurisdiction for issuing PSD permits. Therefore, the EPA is not approving into 40 CFR 52.2470(c) – Table 5 those provisions of Chapter 173-400 WAC related to the PSD program. Specifically, these provisions are WAC 173-400-116 and WAC 173-400-700 through 173-400-750, which the EPA has already approved as applying state-wide under 40 CFR 52.2470(c) – Tables 2 and 3.

As described in our April 29, 2015 action, jurisdiction to implement the visibility permitting program contained in WAC 173-400-117 varies depending on the situation. Ecology retains authority to implement WAC 173-400-117 as it relates to PSD permits. See 80 FR 23721. However, for facilities that may someday be subject to major NNSR under the applicability provisions of WAC 173-400-800, we are proposing that NWCAA would be responsible for implementing those parts of WAC 173-400-117 as they relate to major NNSR permits. See 80 FR 23726. If finalized, the EPA is also proposing to modify the visibility protection Federal

Implementation Plan contained in 40 CFR 52.2498 to reflect the approval of WAC 173-400-117 as it applies to implementation of the major NNSR program in NWCAA's jurisdiction.

Lastly, this SIP revision is not approved to apply on any Indian reservation land within Island, Skagit, or Whatcom counties 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulations shown in the tables in section IV.A. *Regulations to Approve and Incorporate by Reference into the SIP* and the rules proposed for removal from the SIP in section IV.C. *Regulations to Remove from the SIP*. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. 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. 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 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 (Public Law 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).

As discussed above, the SIP is not approved to apply on any Indian reservation land in Island, Skagit, or Whatcom counties, or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction as described in section IV.D above. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 5, 2020. _____

Chris Hladick,
Regional Administrator,
Region 10.

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