6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0647; FRL-10975-01-R10]

Air Plan Approval; WA; Excess Emissions, Startup, Shutdown, and Malfunction Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Washington, through the Department of Ecology on November 12, 2019. The revisions were submitted by Washington in response to an EPA's June 12, 2015 "SIP call" in which EPA found a substantially inadequate Washington SIP provision providing affirmative defenses that operate to limit the jurisdiction of the Federal court in an enforcement action related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing approval of the SIP revisions and proposing to determine that removal of the substantially inadequate provision corrects the deficiency identified in the June 12, 2015, SIP call.

DATES: 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-2019-0647, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from 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*.

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

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I. Background

On February 22, 2013, the EPA issued a *Federal Register* notice of proposed rulemaking outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA) with regard to excess emission events.[1] For each SIP provision that EPA determined to be inconsistent with the

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (Feb. 22, 2013).

CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5).[2] On September 17, 2014, EPA issued a supplemental proposal revising what the Agency had previously proposed on February 22, 2013, in light of a D.C. Circuit decision that determined EPA does not have authority under the CAA to create or approve affirmative defense provisions applicable to private civil suits.[3] EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate.[4]

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," (80 FR 33840, June 12, 2015), hereinafter referred to as the "2015 SSM SIP Action." The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states (including Washington State) were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were

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[2] The term "SIP Call" refers to the requirement for a revised SIP in response to a finding by the EPA that a SIP is "substantially inadequate" to meet CAA requirements pursuant to CAA section 110(k)(5), titled "Calls for plan revisions."

[3] The term *affirmative defense provision* means a state law provision in a SIP that specifies particular criteria or preconditions that, if met, would purport to preclude a court from imposing monetary penalties or other forms of relief for violations of SIP requirements in accordance with CAA section 113 or CAA section 304. 80 FR 33839, June 12, 2015.

[4] See79 FR 55920, September 17, 2014.

required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

In October 2020, EPA issued a SSM Memorandum (2020 Memorandum).[5] Importantly, the 2020 Memorandum stated that it "did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act." Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Washington in 2015. The 2020 Memorandum did, however, indicate EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[6] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including overburdened communities, receive the full health and environmental protections provided by the CAA.[7] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the agency takes action on SIP

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[5] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.
[6] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.
[7] See 80 FR 33840 (June 12, 2015).

submissions, including the November 12, 2019 SIP submittal provided by Washington in response to the 2015 SIP call.

The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. With regard to the Washington SIP, EPA determined that, to the extent that Wash. Admin. Code (WAC) 173-400-107 was intended to be an affirmative defense, it was not consistent with the requirements of the CAA. Therefore, EPA issued a SIP call with respect to this provision. Washington subsequently submitted a SIP revision on November 12, 2019, in response to the SIP Call issued in the 2015 SSM SIP Action. In its submission, Washington removed WAC 173-400-107 from the SIP in its entirety.

Washington also included SIP revisions that are not subject to the 2015 SSM SIP in the 2019 SIP submittal. These additional SIP revisions set alternate emission standards for short-term modes of operations of sources such as startup, shutdown, and scheduled maintenance for some source categories; establish the process for defining facility-specific alternate emission standards; remove excess emission provisions not consistent with EPA's 2015 SSM policy; revise cross-references as necessary to align with updates to the analogous Federal laws or EPA's 2015 SSM policy; and remove some provisions in deference to equally or more stringent relevant Federal laws. Many of the revisions are conditioned to only take effect upon the effective date of EPA's removal of WAC 173-400-107 from the Washington SIP.

II. Analysis of SIP Submission

A. Geographic Applicability

EPA's analysis and proposed actions related to WAC 173-400 in the 2019 SIP submittal similarly apply to geographic areas and source categories under the direct jurisdiction of Ecology and Benton Clean Air Agency (BCAA), a local air agency in Washington, because BCAA's SIP-approved regulations state, in Article 1, Section 1.03,

that BCAA implements and enforces WAC 173-400 "as in effect now and including all future amendments, except where specific provisions of BCAA Regulation 1 apply." The 2019 SIP submittal contains no substantive changes to the minor differences between the two agencies' jurisdictional applicability of subparts of WAC 173–400.

B. The Provision Subject to the 2015 SIP Call

In the 2015 SSM SIP Action, EPA identified WAC 173-400-107 as inconsistent with CAA requirements because it contained affirmative defense provisions. Washington then submitted a SIP revision on November 12, 2019, that removed WAC 173-400-107 from the SIP.

We are proposing to find that the removal of WAC 173-400-107 from the Washington SIP will satisfy the 2015 SIP Call because the removal of WAC 173-400-107 from the SIP will no longer provide for an affirmative defense.

C. Additional SIP Revisions Submitted but Not Specified in the 2015 SIP Call

Washington adopted additional revisions to the State's excess emissions provisions that were not specified in the 2015 SSM SIP Call. These revisions were adopted in three different state rulemaking actions, two in 2018 for provisions in WAC 173-400, General Air Regulations for Air Pollution Sources, and one additional rulemaking in 2019 revising WAC 173-405, Kraft Pulping Mills; WAC 173-410, Sulfite Pulping mills; and WAC 173-415, Primary Aluminum Plants.

WAC 173-400, General Air Regulations for Air Pollution Sources.

In its November 12, 2019 SIP submission, Washington requests approval of revisions to WAC 173-030, Definitions; WAC 173-400-040, General Standards for maximum emissions; WAC 173-400-070, Emission standards for certain source categories; WAC 173-400-081, Startup and Shutdown; WAC 173-400-082, Alternative emission limit that exceeds an emission standard in the SIP; WAC 173-400-107, Excess emissions; and WAC 173-400-171, Public involvement. Many of the revisions are non-

substantive changes.

WAC 173-400-030, Definitions. Washington revised this section to aid in implementation of provisions such as those addressing transient (short-term) modes of operation – including startup and shutdown, and to clarify commonly used 'terms of art' (such as "hog fuel").[8] Most definitions in WAC 173-400-030 remain unchanged since our last approval;[9] however, the addition of new definitions resulted in changes to the numbering sequence. Even though the text of those definitions remains as approved, the state effective date changed to reflect the numbering sequence changes. Therefore, Washington requested EPA approve all of WAC 173-400-030 as submitted on November 12, 2019, except definition (96) related to toxic air pollutants or odors, because it is outside the scope of CAA section 110 requirements for SIPs.[10] A complete redline/strikeout analysis of the updated definitions in WAC 173-400-030 is included in the docket for this action.[11] Updating the state effective date for those definitions in WAC 173-400-030 previously approved into Washington's SIP that remain unchanged will have no effect on emissions.

The two revisions to existing definitions in WAC 173-400-030 were to:

(32)[12] "Excess emissions": to clarify that the term also includes emissions above limits established in permits or orders, including alternative emission limits. This definition comports with our 2015 SSM Policy;[13] and

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[8] For more details, see Chapter 2 of Washington's November 12, 2019, submission, included in the docket for this action as *102_state submittal_SIP_SSM_400_405_410_415.pdf*.
[9] EPA reviewed those definitions and approved them in a previous action (85 FR 10302, February 24, 2020).
[10] Definition (96) was excluded for the same reasons in our February 24, 2020 approval.
[11] See *102_state submittal_SIP_SSM_400_405_410_415.pdf*, included in the docket for this action.
[12] "Excess Emissions" was previously codified as WAC 173-400-030(30), state effective December 29, 2012. EPA approved the December 29, 2012 versions of Washington's definitions of "excess emissions" and "federally enforceable" in a November 3, 2014 action (79 FR 59653). Since that action, EPA has approved more recent versions of Washington's definitions rule, but explicitly excluded the definitions for "excess emissions" and federally enforceable" from those actions. This means the 2012 versions of these definitions are currently effective for purposes of the Washington SIP, and it is those versions that EPA is proposing to revise in this action.
[13] See 80 FR 33840, specifically page 33842.

(38)[14] "Federally enforceable": to include emission limitations during startup and shutdown.

Washington also adopted several new definitions which are discussed below:

(6) "'Alternative emission limit' or 'limitation'": to clarify implementation of the provisions for transient (short-term) modes of operation such as startup and shutdown provisions in WAC 173-400-040(2), 081 and 082, 107, 108 and 109. This definition is defined substantively the same as in our 2015 SSM Policy;[15]

(45) "Hog fuel": to define what has been used as a 'term of art' for wood waste, especially hogged wood waste, utilized for burning and to clarify implementation of emissions standards for boilers in WAC 173-400-040(2) and WAC 173-400-070(2). This definition, while narrower, is generally in keeping with the Federal definition for *biomass or bio-based solid fuel* for boilers and process heaters in EPA's National Emission Standard for Hazardous Air Pollutants (NESHAP) for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, codified at 40 C.F.R. Part 63, Subpart DDDDD (hereinafter "Subpart DDDDD");[16]

(83) "Shutdown" and (89) "Startup": to clarify the general meanings of the terms[17] for purposes of implementation of WAC 173-400. The meaning of these terms is further clarified in WAC 173-400-040(2) in the context of startup and shutdown requirements for boilers, similar to how those terms are used in Subpart DDDDD;

(97) "Transient mode of operation": to include short-term operating periods, including periods of startup and shutdown. This term is used for facilitating development of alternative emission limitations (AELs) for startup and shutdown periods, as well as other short-term modes of operation such as soot blowing (also known as boiler lancing),

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[14] "Federally enforceable" was previously codified as WAC 173-400-030(36), state effective December 29, 2012.
[15] See 80 FR 33840, especially page 33912.
[16] See specifically 40 CFR 63.7575.
[17] 40 CFR 63.7575.

grate cleaning, and refractory curing, during which a source is unable to meet otherwise applicable emissions limits;

(100) “Useful thermal energy”: to clarify implementation of WAC 173-400-040(2)(e). The definition is nearly verbatim from, and is substantively the same as, EPA’s Boiler NESHAP.[18]

(103) “Wigwam” or “silo burner”: This definition clarifies the types of units that are now prohibited under WAC 173-400-070(1).[19]

(104) "Wood-fired boiler": to clarify implementation of regulations tailored specifically for this unique subset of boilers. This definition is similar to, but more narrowly defined than, “boiler” in 40 CFR 63.7575 and in as much as it is used to regulate boilers, comports with the Federal CAA.

For the reasons stated above, EPA is proposing to approve the above changes to Washington’s definitions under WAC 173-400-030.

WAC 173-400-040, General Standards for Maximum Emissions.

Washington made numerous revisions to WAC 173-400-040, many of which are non-substantive typographical and stylistic changes that are not specifically identified in this preamble. Several revisions are conditioned to only take effect upon EPA’s removal of WAC 173-400-107 from the SIP, which as mentioned above, we are proposing to do in this action. In other words, the redline/strikethrough version of Washington’s SIP rules included in the submittal set forth in some cases two versions of the same rule, one of which is intended to become effective upon EPA removal of -107 from the SIP, and the other intended to be automatically rendered ineffective as a matter of state law.

Substantive changes were made to -040(2) Visible emissions. That provision

[18] See specifically 40 CFR 63.7575 and 63.11237.

[19] Adding these definitions to WAC 173-400-030 does not constitute a prohibition, rather it is for clarification purposes as the terms were not defined elsewhere in WAC 173-400. However, the terms are used in WAC 173-400-070(1) which previously allowed the use of these units for disposal burning of waste wood. Revisions in the 2019 SIP submittal prohibit their use as of January 1, 2020.

establishes a general limit on visible emissions, prohibiting emissions greater than twenty percent opacity for more than three minutes during any one-hour period, except as specified in the rule. The effect of the State's November 12, 2019 submittal is to remove some exemptions from WAC 173-400-040(2) and replace them with AELs that apply during transient modes of operation. In the 2015 SSM SIP Action, EPA recommended states consider seven criteria when developing AELs to replace automatic or discretionary exemptions from otherwise applicable SIP requirements. These recommended criteria assure the alternative emission limitations meet basic CAA requirements. The AELs in Washington's submittal are specific to visible emissions (opacity) from certain pre-existing biomass boilers[20] during soot blowing, grate cleaning, and planned startups and shutdowns as well as boilers and lime kilns during refractory curing.

EPA evaluated whether the alternative requirements provided by Washington's 2019 SIP submission are consistent with the Agency's 2015 SSM SIP Action, including the seven criteria recommended therein.[21] In its 2019 submittal, Washington provided an analysis of these criteria as applied to the SIP revisions. For the reasons explained below, EPA finds that the proposed AELs in WAC 173-400-040(2)[22] are consistent with the recommended criteria set forth in that policy. We are therefore proposing to approve these provisions into the Washington SIP.

Washington's 2019 submittal includes detailed analyses of potential impacts from the proposed SIP revisions, which EPA finds show compliance with NAAQS and other CAA requirements such as visibility should not be negatively affected. This is, in part,

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[20] Notably, applicability is limited to only hog fuel or wood-fired boilers (defined in WAC 173-400-030) that utilize only dry particulate matter controls such as multiclone, fabric filter or dry electrostatic precipitator (DESP).

[21] See, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction" 80 FR 33840, section XI.D.

[22] As provided in Washington's 2019 SIP submittal.

because the AELs do not equate to a relaxation of limits or an increase in emissions. Rather, provisions in Washington's SIP that serve to exempt or otherwise excuse excess emissions entirely (de facto unlimited emissions) are being replaced with more stringent emissions limitations. We find that particulate matter (PM) emissions will not increase as a result of the revisions for two reasons: (1) Washington's revised rules require compliance with AELs during transient modes of operations, whereas the prior version of the rules (including the SIP-called version of WAC 173-400-107) allowed sources to routinely avoid penalties for excess emissions; and (2) the pre-existing emissions limits remain in place for non-transient modes of operation for these sources.

As explained above, Washington's November 12, 2019 submittal includes AELs applicable to three narrow circumstances: soot blowing or grate cleaning at hog fuel or wood-fired boilers; emissions from startup or shutdown at hog fuel or wood-fired boilers; and curing of furnace refractory in a lime kiln or boiler. EPA's analysis of each of the seven criteria as they apply to these AELs is set forth below.

(1) The revision is limited to specific, narrowly defined source categories using specific control strategies (e.g., cogeneration facilities burning natural gas and using selective catalytic reduction).

WAC 173-400-040(2)(a), Soot blowing and grate cleaning. The applicability of this AEL for visible emissions [opacity] is limited to hog fuel or wood-fired boilers that use only dry particulate controls. In addition, soot blowing and grate cleaning are work practice activities that decrease emissions. If these activities are not conducted, heat transfer efficiency decreases resulting in stoichiometric increases in emissions as more fuel combustion is required per unit of heat transferred. In addition, the increased combustion shortens the expected useful life of both the unit and control device.

WAC 173-400-040(2)(e), Planned startups and shutdowns. The applicability of AELs for visible emissions (opacity) is limited to hog fuel or wood-fired boilers in operation before January 24, 2018, that use only dry particulate matter controls.

WAC 173-400-040(2)(f), Furnace refractory curing. The applicability of this AEL is limited to furnace refractory in lime kilns and boilers. The AEL does not specify a control strategy. However, EPA believes control strategy specificity is unnecessary because the requirement to engage emission controls as soon as possible, -040(2)(f)(v), is likewise unspecific to type of control strategy.

(2) Use of the control strategy for this source category is technically infeasible during startup or shutdown periods.

WAC 173-400-040(2)(a), Soot blowing and grate cleaning. During soot blowing and grate cleaning activities, it is not technically feasible to meet the SIP's general 20% opacity limit due to operational and control device limitations as permitted in compliance with the CAA. EPA also notes this AEL is not specific to startup or shutdown, but instead applies to activities that are themselves work practices and serve to decrease emissions. If soot blowing and grate cleaning activities are not conducted, heat transfer efficiency decreases resulting in stoichiometric increases in emissions as more fuel combustion is required per unit of heat transferred. In addition, the increased combustion shortens the expected useful life of both the unit and control device. The control devices are not designed to handle these activities in a manner ensuring opacity is limited to 20%.

WAC 173-400-040(2)(e), Planned startups and shutdowns. It is technically infeasible, as reflected in (5)(c)(1) of Table 3 in Subpart DDDDD, to engage dry particulate control devices during boiler startup and shutdown. Engaging these controls risks damaging them as per manufacturer's instructions.

WAC 173-400-040(2)(f), Furnace refractory curing. This AEL is not specific to startup or shutdown. However, the applicability of the AEL is limited to only those periods when compliance with the 20% opacity limit would be impracticable due to the inherent nature of conducting the curing process consistent with manufacturer's instructions.

(3) The alternative emission limitation requires that the frequency and duration of

operation in startup or shutdown mode are minimized to the greatest extent practicable.

WAC 173-400-040(2)(a), Soot blowing and grate cleaning. This AEL is limited in both duration and frequency. Specifically, the AEL is limited to no more than one fifteen-minute period in any eight consecutive hours. The AEL also requires the source schedule the activity for the same approximate time(s) each day and notify the permitting authority in writing of the schedule before using the AELs.

EPA also notes that this AEL is not specific to startup or shutdown, but instead applies to activities that are themselves work practices and serve to decrease emissions. If these activities are not conducted, heat transfer efficiency decreases resulting in stoichiometric increases in emissions as more fuel combustion is required per unit of heat transferred. In addition, the increased combustion shortens the expected useful life of both the unit and control device.

WAC 173-400-040(2)(e), Planned startups and shutdowns. The durations of these AELs are modeled after the Federal AELs required for these types of boilers under Subpart DDDDD. Washington's AELs do not impose a frequency limit, but frequency is intrinsically limited as affected types of sources are mainly industrial or commercial boilers operated to facilitate production. Therefore, EPA anticipates that operators will work to maximize total operational hours and minimize downtime as a practical matter.

WAC 173-400-040(2)(f), Furnace refractory curing. This AEL is not specific to startup or shutdown, but duration is limited by the requirement to engage the emissions controls as soon as possible during the curing process while following manufacturers' instructions, and in no event more than 36 hours from the commencement of refractory curing. Frequency is also limited as a practical matter to the installation or repair of refractory.

(4) As part of its justification of the SIP revision, the state analyzes the potential worst-case emissions that could occur during startup and shutdown based on the applicable alternative emission limitation.

WAC 173-400-040(2)(e), Planned startups and shutdowns. Washington's submittal estimates the potential worst-case emission scenario from this AEL based on the potential for startup or shutdown of a boiler coinciding with the maximum four-hourly $PM_{2.5}$ concentrations over a three-year period from monitoring data, which was 130 μg/m^3. In this scenario, Washington estimates the probability of the AELs resulting in an exceedance of the $PM_{2.5}$ 24-hour NAAQS is once in 810 days. Washington also provides evidence in its submittal demonstrating that the assumed high value of 130 μg/m^3 used for this estimate is likely attributable to wildfires and not anthropogenic sources. Therefore, it is likely this probability is an overestimate. The State also noted that the estimates are based on data from a time representing source operations when emissions were likely higher than would be expected under the amended rules because less stringent requirements applied during these periods than would now be required by the AELs. The results of these conservative scenarios are that it is unlikely the AELs will cause or contribute to a violation of the $PM_{2.5}$ 24-hour NAAQS.[23]

WAC 173-400-040(2)(a), Soot blowing and grate cleaning, and WAC 173-400-040(2)(f), Furnace refractory curing. The State explained in its submittal that these events should not increase and emissions under the AEL are likely to be lower than emissions during the worst-case boiler startup and shutdown scenario analyzed above. In other words, EPA believes the results are also representative of a worst-case scenario for these AELs and indicate it is unlikely the AELs will cause or contribute to a violation of the $PM_{2.5}$ 24-hour NAAQS.

(5) The alternative emission limitation requires that all possible steps are taken to

[23] Given $PM_{2.5}$ 24-hour NAAQS is calculated based on the 3-year average of the 98th percentile of valid data concentrations (see 40 CFR Appendix N to Part 50 4.04.2(a)), exceeding up to 7 days per year (if all 365 days are validated) in all three years would not constitute a violation. Therefore, potential to exceed once every 810 days is unlikely to result in a violation that is calculated on a 1,095-day cycle. Note: the 1 in 810 days probability is based on a 4-hour average that is likely higher than those caused by startups and shutdowns occurring when exceptions that equated to no limit were easy to obtain. Those exceptions are being removed from the SIP and there is no reasonable expectation that sources will increase emissions during these transient modes of operation since the pre-existing exceptions pathway offers no protection from Federal enforcement.

minimize the impact of emissions during startup and shutdown on ambient air quality.

WAC 173-400-040(2)(a), Soot blowing and grate cleaning. The AEL is limited in both duration and frequency as discussed under criteria (3) above. The AEL also requires sources schedule the activity for the same approximate time(s) each day and notify the permitting authority in writing of the schedule before using the AEL. Additionally, any source utilizing the AEL is required to maintain contemporaneous records sufficient to demonstrate compliance. EPA also notes that soot blowing and grate cleaning are relatively straightforward, but necessary maintenance activities for the continued operation of control equipment. In this context, EPA believes the AEL requirements represent all practically available steps to minimize emissions during these events.

WAC 173-400-040(2)(e), Planned startups and shutdowns. This AEL provides two options: comply with a temporary forty percent opacity limit for a period not exceeding three minutes in any hour ((2(e)(vi)(A)); or comply with each of the management practices in (2)(e)(vi)(B)(I) through (V). EPA agrees that allowing sources to increase opacity to forty percent for short periods during startup and shutdown represents a reasonable application of this criterion. Additionally, the option in (2)(e)(vi)(B) requires developing and implementing a plan to minimize startup and shutdown according to manufacturer's recommended procedure, (2)(e)(vi)(B)(V).

WAC 173-400-040(2)(f), Furnace refractory curing. In addition to the forty percent opacity limit, the AEL requires all practical steps be taken to minimize emissions. Specifically, sources must engage emissions controls as soon as possible while following manufacturers' instructions and using clean fuel.

(6) The alternative emission limitation requires that at all times, the facility is operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures.

WAC 173-400-040(2)(a), Soot blowing and grate cleaning. This AEL applies to activities that are themselves work practices for maximizing efficiency while minimizing

emissions and are conducted in part to facilitate compliance with the otherwise applicable emissions limitation. If these activities are not conducted, heat transfer efficiency decreases resulting in stoichiometric increases in emissions as more fuel combustion is required per unit of heat transferred. In addition, the increased combustion shortens the expected useful life of both the unit and control device. As discussed above, the AEL is limited in both duration and frequency and requires the source schedule the activity for the same approximate time(s) each day and notify the permitting authority in writing of that schedule before using the AEL. EPA also notes that soot blowing and grate cleaning are relatively straightforward, but necessary maintenance activities for the continued operation of control equipment. In this context, EPA believes the soot blowing and grate cleaning AEL requirements represent all practically available steps to minimize emissions during these events.

WAC 173-400-040(2)(e), Planned startups and shutdowns. The AEL includes a requirement that a source develop and implement a written startup and shutdown plan that minimizes the AEL period according to manufacturer's recommended procedures, operate all continuous monitoring systems, as well as document how compliance conditions were met.

WAC 173-400-040(2)(f), Furnace refractory curing. The AEL requires good practices for minimizing emissions throughout the duration of the refractory curing process. Specifically, sources must engage emissions controls as soon as possible while following manufacturers' instructions and using clean fuel. Frequency of refractory curing is also limited as a practical matter to the installation or repair of refractory.

(7) The alternative emission limitation requires that the owner or operator's actions during startup and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

WAC 173-400-040(2)(a), Soot blowing and grate cleaning. Subsection (2)(a)(ii)(C) requires the owner or operator maintain contemporaneous records sufficient

to demonstrate compliance which must include date, start, and stop time of each occurrence, and the results of opacity readings conducted during the occurrence.

EPA also notes that, as stated above, this AEL is not specific to startup or shutdown, but instead applies to activities that are themselves work practices and serve to decrease emissions.

WAC 173-400-040(2)(e), Planned startups and shutdowns. Subsection (2)(e)(vii) requires the facility to maintain records to demonstrate compliance including the start and stop times of individual phases and documentation of which AEL was chosen and how the conditions of that option were met.

WAC 173-400-040(2)(f), Furnace refractory curing. This AEL includes requirements to notify the permitting authority at least one working day prior to commencing the curing process, engage the emissions controls as soon as possible during the curing process, follow manufacturer's instructions including temperature increase rates and holding times, and provide a copy of those instructions to the permitting authority. It is in the source's own interest to follow manufacturer's instructions as failure to do so can cause spalling or catastrophic failure of the refractory resulting in additional operation costs associated to repair or replace the damaged refractory.

(8) EPA's Proposed Conclusion Regarding the AEL Criteria[24]

Based on the analysis discussed above, EPA is proposing to conclude the three AELs included in Washington's SIP submittal are consistent with the criteria set forth in our 2015 SSM Policy. Therefore, we are proposing to approve these revisions into the Washington SIP.

WAC 173-400-070, Emission standards for certain source categories.

Washington added language tying effective dates to EPA's removal of -107, updated

[24] Regarding the seven criteria analysis above, we note "malfunction" was not mentioned because the State did not submit any AELs for malfunctions.

various cross-references, and made numerous non-substantive typographical, stylistic, and clarifying revisions which we will not detail here. Washington revised the provisions for wigwam and silo burners rendering the operation of them illegal statewide and thereby reducing overall potential emissions. The State also removed visible emissions exemptions for orchard heating devices and hog fuel boilers. The exemption for hog fuel boilers was replaced with the AELs in WAC 173-400-040(2)(a)(ii) by reference. The catalytic cracking unit section was obsolete and subsequently deleted because corresponding Federal regulations, which the State adopts by reference, have more stringent requirements and to reduce unnecessary duplication of Federal requirements.

WAC 173-400-081, Emission limits during startup and shutdown. This section establishes a case-by-case technology-based permitting pathway for establishing startup and shutdown AELs. Numerous non-substantive changes were made to clarify applicability and requirements associated with establishing AELs. The most substantive change is the addition of (4)(b) which requires the permitting authority comply with the applicable requirements in WAC 173-400-082. Under WAC 173-400-081(4)(a), if an emission limitation or other parameter created increases allowable emissions over levels already authorized in Washington's SIP, it will not take effect unless it is approved by EPA as a SIP amendment.

WAC 173-400-082 Alternative emission limit that exceeds an emission standard in the SIP. This is an entirely new section establishing a process for an owner or operator to request—and the State to approve via a regulatory order—an alternative emission limit that would apply during a specified transient mode of operation. This process was designed to establish AELs that meet the seven criteria discussed above. Any AEL established under this section only applies to the specified emissions units at the facility requesting the regulatory order. Moreover, any such AEL only goes into effect if EPA approves the new limit into the SIP.

WAC 173-400-171 Public notice and opportunity for public comment. While many changes were made to this section, the only substantive change is the addition of (3)(o) which requires mandatory public comment periods for orders (permits) establishing AELs under WAC 173-400-081 or -082 that exceed otherwise SIP applicable limits.

The State's 2019 revisions also affect these three source-specific regulations: WAC 173-405, Kraft Pulping Mills; WAC 173-410, Sulfite Pulping Mills; and WAC 173-415, Primary Aluminum Plants. The primary impact of these revisions is to incorporate by reference the AELs described above for hog fuel boilers, wood-fired boilers, and refractory curing into these source-category specific rules. In other words, these revisions do not create additional exemptions or alternatives to the SIP's general opacity limit but reiterate the requirement to comply with applicable AELs as stated in WAC 173-400-040(2) during corresponding transient modes of operation.

Most of the revisions are analogous to, and in several instances direct adoptions of, the revisions in WAC 173-400 discussed above, including: removing exemptions for excess emissions and references to state enforcement discretion provisions, updating cross-references, AELs for soot blowing, grate cleaning, startup and shutdown of hog-fuel boilers, and refractory curing. The analyses provided in the State's submission as well as EPA's analyses stated above equally apply to the sources regulated under WAC 173-405, -410, and -415. Therefore, EPA is proposing to approve the requested revisions for those reasons.

III. Proposed Action

EPA is proposing to approve and incorporate by reference into the Washington SIP the revisions Washington submitted on November 12, 2019. This action includes removal of the provision WAC 173-400-107 – identified as inconsistent with CAA requirements – from the Washington SIP, as well as revisions to WAC 173-400-030, -

400-040, -400-070, -400-081, -400-082, -400-171, -405-040, -410-040, -415-030; the addition of WAC 173-415-075; and the removal of 173-405-077, -410-067, and -415-070.

The proposed revisions, upon finalization, will apply specifically to the jurisdictions of Washington Department of Ecology and Benton Clean Air Agency. Under the applicability provisions of WAC 173-405-012, WAC 173-410-012, and WAC 173-415-012, BCAA does not have jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. For these sources, Ecology retains statewide, direct jurisdiction over these sources.

IV. Incorporation by Reference

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

The EPA is also proposing to remove Washington Administrative Code 173-405-077, -410-067, and -415-070, as described in sections II and III of this document, from the Washington State Implementation Plan, which is incorporated by reference under 1 CFR part 51.

V. 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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action

merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-

income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies." The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873

Survey Area.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 8, 2023.

Casey Sixkiller,
Regional Administrator, Region 10.
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