



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2024-0372; FRL-12293-02-R10]

Air Plan Approval; WA; Excess Emissions, Startup, Shutdown, and Malfunction Revisions, Energy Facility Site Evaluation Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Washington State Implementation Plan (SIP) revisions to the Energy Facility Site Evaluation Council (EFSEC) air quality regulations submitted by the State of Washington, through the Department of Ecology (Ecology) on June 15, 2023. The revisions were submitted in response to the EPA’s June 12, 2015 “SIP call” in which the EPA found substantially inadequate a 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. The EPA’s approval of the SIP revisions includes removal of the substantially inadequate provision which corrects the EFSEC deficiency identified in the 2015 SSM SIP call and the EPA’s January 2022 finding of failure to submit. Washington withdrew some portions of the revisions submitted that were not identified in the 2015 SSM SIP call and therefore the EPA is not approving those withdrawn portions.

DATES: This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2024-0372. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will

be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

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

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

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I. Background

On October 22, 2024 (89 FR 84322), the EPA proposed to approve State Implementation Plan (SIP) revisions to the Energy Facility Site Evaluation Council (EFSEC) air quality regulations submitted by the State of Washington, through the Department of Ecology (Ecology) on June 15, 2023. In that proposal, we also proposed to determine that one of the SIP revisions, the removal of EFSEC’s adoption by reference of WAC 173-400-107, corrects the deficiency with respect to EFSEC that we identified in our June 12, 2015 action entitled “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”¹ (“2015 SSM SIP call”) and our January 12, 2022, Findings of Failure to Submit² (FFS). The remaining SIP revisions submitted with the removal of EFSEC’s adoption by

¹ 80 FR 33839, June 12, 2015.

² Findings of Failure to Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying To Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 87 FR 1680 (January 12, 2022), available at <https://www.regulations.gov>, Docket ID No. EPA-HQ-OAR-2021-0863.

reference of WAC 173-400-107 on June 15, 2023, were not specified in the 2015 SSM SIP call. The reasons for our proposed approval and determination can be found in the proposed action and will not be fully restated here. The public comment period closed on November 21, 2024. We received one comment outside the scope of our proposed action; therefore, we are finalizing our action as proposed.

II. Public Comment and the EPA’s Response

Comment: The commenter appears to support the EPA finalizing approval of revisions to EFSEC’s regulations but voiced concern about the amount of time it took to get to this approval from issuance of the 2015 SSM SIP call. The commenter also raised concerns about implementation “of the statute” and the allowance of “significant pollutant emissions despite the good-faith intentions of both Federal and state agencies.” The commenter went on to suggest “New rules surrounding revision timelines could help effectively allocate agency efforts in the exercise of its authority while retaining the necessary period for due process and public participation.

Response: The EPA acknowledges the commenter’s concerns. However, the concerns raised by the commenter are outside the scope of this action. Moreover, the commenter does not indicate that the EPA’s proposed approval action of the SIP submission should be changed or should not be finalized as proposed. Rather, the comment appears to support finalizing the proposed approval. Therefore, we are finalizing our action as proposed.

III. Final Action

The EPA is approving and incorporating by reference in the Washington SIP the revisions Washington submitted on June 15, 2023, except for those withdrawn by Washington.³ This action includes removal of the adoption by reference of WAC 173-400-107– the provision identified as inconsistent with Clean Air Act (CAA) requirements in our 2015 SSM SIP call –

³ See *201_state submittal supplement_EFSEC Partial Withdrawal Request Letter - Ecology.pdf* and *202_state submittal supplement_EFSEC Partial Withdrawal Request Letter - EFSEC.pdf* included in the docket for this action.

from the EFSEC air quality regulations contained in Chapter 463-78 Washington Administrative Code (WAC) *General and Operating Permit Regulations for Air Pollution Sources*.

Once this action becomes effective, the Washington SIP will no longer include the following regulations for EFSEC's jurisdiction:

- WAC 173-400-070, Emission Standards for Certain Source Categories – sets forth maximum allowable standards for emissions units within the categories listed;
- WAC 173-400-107, Excess Emissions – established a pathway to determine excess emissions unavoidable, excuse them from penalty, and in certain instances precluded them from being considered violations.

This action also approves and incorporates by reference at 40 CFR 52.2470(c)—*Table 3—Additional Regulations Approved for the Energy Facilities Site Evaluation Council (EFSEC) Jurisdiction*, the following revised regulations:

- WAC 463-78-005(2), Adoption by Reference (State effective August 28, 2020) – which adopts certain regulations in Chapter 173-400 WAC by reference.

The revised Chapter 173-400 WAC provisions approved for EFSEC's jurisdiction are:

- WAC 173-400-030, Definitions (State effective September 16, 2018) – which establishes definitions used throughout Chapter 173-400 WAC;
- WAC 173-400-081, Emission Limits during Startup and Shutdown (State effective September 16, 2018) – which establishes pathway for developing emissions limits that apply during startup and shutdown;
- WAC 173-400-082, Alternative Emission Limit That Exceeds an Emission Standard in the SIP (State effective September 16, 2018) – which establishes pathway for an owner or operator to request an alternative emissions limit;
- WAC 173-400-136 Use of Emission Reduction Credits (ERC) (State effective December 29, 2012) – which identifies permissible use and sets certain conditions of use of ERCs;
- WAC 173-400-171 Public Involvement (State effective September 16, 2018) – which sets

forth certain requirements for public involvement;

These SIP revisions apply specifically to the jurisdiction of the Washington State Energy Facility Site Evaluation Council.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference as described in section III of this preamble. The EPA has made, and will continue to make, these materials 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). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁴

Also in this document, the EPA is removing regulatory text from incorporated by reference, as described in section III. of this preamble.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves 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 14094

⁴ 62 FR 27968 (May 22, 1997).

(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); and
- 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.

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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines 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.” The 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. The 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 Executive Order 12898 of achieving environmental justice for communities with EJ concerns.

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: December 17, 2024.

Daniel Opalski,
Acting Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart WW—Washington

2. In § 52.2470, in paragraph (c), amend table 3 by:

- a. Revising entries “78-005” and “173-400-030”;
- b. Removing entries “173-400-030(30) & (36)” and “173-400-070”;
- c. Revising entry “173-400-081”;
- d. Adding entry “173-400-082” in numerical order;
- e. Removing entry “173-400-107”; and
- f. Revising entries “173-400-136” and “173-400-171”.

The revisions and additions read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

TABLE 3—ADDITIONAL REGULATIONS APPROVED FOR THE ENERGY FACILITIES SITE EVALUATION COUNCIL (EFSEC) JURISDICTION

[See the SIP-approved provisions of WAC 463-78-020 for jurisdictional applicability]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Administrative Code, Chapter 463-78 – General and Operating Permit Regulations for Air Pollution Sources				
78-005	Adoption by	8/28/20	[INSERT DATE]	Subsection (2) only.

	Reference		OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	See below for the updated Chapter 173-400 WAC provisions adopted by reference and submitted to the EPA for approval.		
*	*	*	*	*	*	*
Washington Administrative Code, Chapter 173-400 Regulations Incorporated by Reference in WAC 463-78-005						
*	*	*	*	*	*	*
173-400-030	Definitions	9/16/18	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	Except: 173-400-030(96).		
*	*	*	*	*	*	*
173-400-081	General Standards for Maximum Emissions	9/16/18	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]			
173-400-082	General Standards for Maximum Emissions	9/16/18	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]			
*	*	*	*	*	*	*
173-400-136	Use of Emission Reduction Credits (ERC)	12/29/12	[INSERT DATE OF PUBLICATION IN THE FEDERAL			

			REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
*	*	*	*	*
173-400-171	Public Notice and Opportunity for Public Comment	9/16/18	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	Except: The part of 173-400-171(3)(b) that says, • “or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173- 460 WAC”; 173-400- 171(12).
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[FR Doc. 2024-30536 Filed: 12/26/2024 8:45 am; Publication Date: 12/27/2024]