

TABLE 1 TO PARAGRAPH (a)—Continued

Name	Facility type	Latitude	Longitude
F11	WTG	40°17'49.988" N	73°25'10.306" W
B12	WTG	40°20'35.896" N	73°24'14.694" W
C12	WTG	40°19'55.236" N	73°24'15.652" W
B13	WTG	40°20'25.860" N	73°23'23.192" W
C13	WTG	40°19'45.200" N	73°23'24.159" W
B14	WTG	40°20'15.817" N	73°22'31.694" W
D14	WTG	40°18'54.499" N	73°22'33.644" W
C15	WTG	40°19'25.110" N	73°21'41.185" W
H15	WTG	40°16'19.659" N	73°21'45.664" W
B16	WTG	40°19'55.714" N	73°20'48.712" W
G16	WTG	40°16'32.420" N	73°20'53.667" W
H16	WTG	40°15'57.881" N	73°20'54.528" W
B17	WTG	40°19'45.652" N	73°19'57.228" W
D17	WTG	40°18'24.335" N	73°19'59.229" W
F17	WTG	40°17'03.018" N	73°20'01.227" W
C18	WTG	40°18'54.926" N	73°19'06.757" W
D18	WTG	40°18'14.268" N	73°19'07.766" W
E18	WTG	40°17'33.610" N	73°19'08.774" W
F18	WTG	40°16'52.952" N	73°19'09.781" W
B19	WTG	40°19'25.511" N	73°18'14.273" W
C19	WTG	40°18'44.853" N	73°18'15.290" W
D19	WTG	40°18'04.195" N	73°18'16.307" W
E19	WTG	40°17'23.537" N	73°18'17.324" W
B20	WTG	40°19'15.431" N	73°17'22.802" W
C20	WTG	40°18'34.773" N	73°17'23.828" W
D20	WTG	40°17'54.115" N	73°17'24.853" W
B21	WTG	40°19'05.344" N	73°16'31.335" W
C21	WTG	40°18'24.687" N	73°16'32.370" W

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the First Coast Guard District Commander in the enforcement of the safety zones. *Local officer* means any officer, agent, or employee of a unit of local government authorized by law or by a local government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(c) *Regulations.* No vessel may enter or remain in this safety zone except for the following:

(1) An attending vessel as defined in 33 CFR 147.20;

(2) A vessel authorized by the First Coast Guard District Commander or a designated representative.

(d) *Request for Permission.* Persons or vessels seeking to enter the safety zone must request authorization from the First Coast Guard District Commander or a designated representative. If permission is granted, all persons and vessels must comply with lawful instructions of the First Coast Guard District Commander or designated representative via VHF–FM channel 16 or by phone at 866–842–1560 (First Coast Guard District Command Center).

(e) *Effective and enforcement periods.*

This section will be effective from March 1, 2025, through 11:59 p.m. on February 29, 2028. But it will only be enforced during active construction or other instances which may cause a hazard to navigation deemed necessary by the First Coast Guard District Commander. The First Coast Guard District Commander will make notification of the exact dates and times in advance of each enforcement period for the safety zones in paragraph (a) of this section to the local maritime community through the Local Notice to Mariners and will issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) as soon as practicable in response to an emergency. If the project is completed before February 29, 2028, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. The First Coast Guard District Local Notice to Mariners can be found at: <http://www.navcen.uscg.gov>.

(f) *Processing of violations.* Violations of this section may be processed in accordance with 33 CFR 140.40 on civil and criminal penalty proceedings.

M.E. Platt,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2024–0372; FRL–12293–01–R10]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve 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 EPA’s June 12, 2015 “SIP call” in which the 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. The EPA is proposing approval of the SIP revisions and proposing to determine that removal of the substantially

inadequate provision 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 proposing action on those withdrawn portions.

DATES: Comments must be received on or before November 21, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2024-0372, 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>.

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 EPA.

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I. Background

On June 12, 2015, pursuant to CAA section 110(k)(5), the 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 required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

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. The detailed rationale for issuing the SIP call to Washington can be found in the 2015 SSM SIP Action and preceding proposed actions.^{1 2}

On January 12, 2022, the EPA issued Findings of Failure to Submit (FFS) to 12 air agencies, including EFSEC, that had not submitted SIPs responding to the 2015 SSM SIP call by the November 22, 2016, deadline per the requirements of section 110(k)(5) of the Act.³

On March 1, 2024, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision in *Environ. Comm. Fl. Elec. Power v. EPA*, No. 15–1239 (“D.C.

¹ See 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 (February 22, 2013).

² See SNPR (“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; Supplemental Proposal To Address Affirmative Defense Provisions in States Included in the Petition for Rulemaking and in Additional States; Supplemental notice of proposed rulemaking,” 79 FR 55919, September 17, 2014).

³ 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 [Regulations.gov](https://www.regulations.gov), Docket ID No. EPA-HQ-OAR-2021-0863.

Circuit decision’).⁴ The case was a consolidated set of petitions for review of the 2015 SSM SIP Action. The Court granted the petitions in part, vacating the SIP call with respect to SIP provisions that EPA identified as automatic exemptions, director’s discretion provisions, and affirmative defenses that are functionally exemptions; and denied the petitions as to other provisions that EPA identified as overbroad enforcement discretion provisions, or affirmative defense provisions that would preclude or limit a court from imposing relief in the case of violations, which the Court also refers to as “specific relief.”

With respect to affirmative defense provisions against specific relief, the Court reaffirmed that states cannot limit courts’ discretion to determine and apply appropriate civil penalties for violations of SIPs and denied the petitions for review as to affirmative defenses against monetary damages.⁵ This is in keeping with the EPA’s interpretation of the CAA in our 2015 SSM SIP Action that states do not have authority to create, and thus the EPA does not have authority to approve, SIP provisions that include an affirmative defense that would operate to alter the jurisdiction of Federal courts to assess penalties or other forms of relief authorized in sections 113 and 304.⁶ As explained in the 2015 SSM SIP Action, WAC 173-400-107 provides affirmative defenses that operate to limit the jurisdiction of the Federal court in an enforcement action to assess monetary penalties or impose injunctive relief under certain circumstances as contemplated in CAA sections 113 and 304.⁷

By statute, EFSEC has jurisdiction for managing the air program with respect to major energy facilities in the State of Washington. See Chapter 80.50 of the Revised Code of Washington (RCW). EFSEC air quality regulations primarily adopt by reference Ecology’s general air quality regulations, including WAC 173-400-107. Thus, in our 2015 SSM SIP Action, the EPA also issued a SIP call with respect to EFSEC’s adoption by reference of WAC 173-400-107 in WAC 463-39-005.⁸

In response to the EPA’s 2015 SSM SIP call, Ecology removed WAC 173-400-107 from the SIP. The EPA approved this SIP revision, along with

⁴ See *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77, 115 (D.C. Cir. 2024).

⁵ *Id.* at 114–15.

⁶ As stated in our supplemental notice of proposed rulemaking 79 FR 55920 at 55929. See also 80 FR 33840 at 33853, 33870.

⁷ See 79 FR 55920 at 55952. See also 80 FR 33974.

⁸ See 80 FR 33840, June 12, 2015.

others, on December 28, 2023 (88 FR 89582). In its June 15, 2023 SIP submittal, Washington is, among other revisions, removing adoption by reference of WAC 173–400–107 in EFSEC’s regulations.

II. Analysis of SIP Submission

A. The Provision Subject to the 2015 SSM SIP Call

In the 2015 SSM SIP Action, the EPA identified WAC 463–39–005 as inconsistent with CAA requirements because it contained adoption by reference of WAC 173–400–107. The EPA last approved EFSEC’s adoption by reference of WAC 173–400–107 on May 23, 1996 (61 FR 25791). In 2015, EFSEC recodified 463–39 as 463–78 but otherwise retained the adoption by reference of WAC 173–400–107. The EPA approved this ministerial change, among other revisions, on May 30, 2017, (82 FR 24531) and January 24, 2020, (85 FR 4233). Accordingly, the June 15, 2023, SIP submittal references EFSEC’s adoptions by reference in WAC 463–78 rather than the WAC 463–39 referenced in the 2015 SSM SIP call.

Subsequent to the EPA’s January 2022 FFS, Washington submitted a SIP revision on June 15, 2023, that removed the EFSEC’s adoption by reference of WAC 173–400–107 in its entirety and included additional revisions to the SIP for EFSEC’s jurisdiction.

We reviewed Washington’s June 15, 2023 SIP submittal and found the submission technically and administratively complete. We subsequently issued a completeness determination letter to Washington on August 8, 2023.⁹ This completeness determination stopped the 18-month sanctions clock for EFSEC’s jurisdiction that was started by the 2022 FFS. This completeness determination did not address the other SIP revisions included in the June 15, 2023 SIP submittal.

The EPA has assessed the impact of the D.C. Circuit decision with respect to the removal of the specific affirmative defense provision at issue in WAC 173–400–107. We have concluded that the previously stated reasons for the proposed removal of these provisions, as articulated in the 2015 SSM SIP Action, are consistent with the recent D.C. Circuit decision. The Court upheld the EPA’s 2015 SSM SIP Action with regard to affirmative defenses against specific relief, finding that because CAA 304(a) and 113(b) authorize citizens and the EPA to seek injunctive relief and

monetary penalties against sources that violate a SIP’s emission rules, such an affirmative defense would “block that aspect of the Act’s enforcement regime.”¹⁰

We are proposing to find that the removal of EFSEC’s adoption by reference of WAC 173–400–107 in WAC 463–78–005 from the Washington SIP will satisfy the 2015 SSM SIP call as it will no longer provide an affirmative defense that may operate to limit the jurisdiction of the Federal court in an enforcement action.

B. Additional SIP Revisions Submitted But Not Specified in the 2015 SSM SIP Call

Washington also included SIP revisions in the June 15, 2023 SIP submittal that are not subject to the 2015 SSM SIP call. On July 26, 2024, Washington submitted a letter dated July 24, 2024, to the EPA withdrawing certain other SIP revisions not subject to the 2015 SSM SIP call.¹¹ Therefore, the EPA is not proposing action on the withdrawn provisions and will not cover them in this analysis. The remaining SIP revisions for which we are proposing action: correct a typographical error; establish the process for defining facility-specific alternate emission standards; remove excess emission provisions not consistent with the EPA’s 2015 SSM policy; revise cross-references as necessary to align with updates to the analogous Federal laws or the 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 the EPA’s removal of WAC 173–400–107 from the Washington SIP. The EPA approved identical revisions to WAC 173–400 applicable to Ecology’s jurisdiction on December 28, 2023 (88 FR 89582). See the preamble to the EPA’s June 15, 2023, proposed rule for a full explanation of these rule revisions. Washington also requested the EPA correct a typographical error in the SIP regarding a state effective date.

The additional revisions included in the June 15, 2023 SIP submittal that were not specified in the 2015 SSM SIP call or 2022 FFS were adopted in two different state rulemaking actions in 2018 for provisions in WAC 173–400,

General Air Regulations for Air Pollution Sources.

WAC 173–400, General Air Regulations for Air Pollution Sources. In its June 15, 2023, SIP submittal, Washington requested approval of revisions to WAC 173–030, Definitions; 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; WAC 173–400–136, Use of Emission Reduction Credits (ERC); and WAC 173–400–171, Public involvement. Many of the revisions are non-substantive changes.

WAC 173–400–030, Definitions. As described in our most recent approval of WAC 173–400–030 (88 FR 89582, December 28, 2023) which EFSEC adopts by reference: 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”).¹² Most definitions in WAC 173–400–030 remain unchanged since our last approval;¹³ 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 the EPA approve all of WAC 173–400–030 as submitted on June 15, 2023, except definition (96) related to toxic air pollutants or odors, because it is outside the scope of CAA section 110 requirements for SIPs.¹⁴ A complete redline/strikeout analysis of the updated definitions in WAC 173–400–030 is included in the docket for this action.¹⁵ 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.

¹² 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*.

¹³ EPA reviewed those definitions and approved them in a previous action (85 FR 4233, January 20, 2020).

¹⁴ Definition (96) was excluded for the same reasons in our January 20, 2020 approval (88 FR 4233).

¹⁵ See Appendix C in *104_state_submittal_Publication_19-02-030.pdf*, included in the docket for this action.

¹⁰ See 94 F.4th at 114–15.

¹¹ 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.

⁹ See *301_EFSEC_SSM_SIP_Call_FFS_Completeness-Letter.pdf*, included in the docket for this action.

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

(32)¹⁶ “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 SIP Action;¹⁷ and

(38)¹⁸ “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 SIP Action;¹⁹

(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 in scope, is generally in keeping with the Federal definition for *biomass or bio-based solid fuel* for boilers and process heaters in the EPA’s National Emission Standard for Hazardous Air Pollutants (NESHAP) for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, codified at 40 CFR part 63, “Subpart DDDDD”;²⁰

(83) “Shutdown” and (89) “Startup”: to clarify the general meanings of the terms²¹ for purposes of implementation of WAC 173–400.

(97) “Transient code 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), grate cleaning, and refractory curing, during which a source is unable to meet otherwise applicable emissions limits;

(100) “Useful thermal energy”: to clarify the general meanings of the terms for purposes of implementation of WAC 173–400. The definition is nearly verbatim from, and is substantively the same as, the EPA’s Boiler NESHAP.²²

(103) “Wigwam” or “silo burner”: This definition clarifies the types of units that are now prohibited under WAC 173–400–070(1).²³

(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, the EPA is proposing to approve the above changes to Washington’s definitions under WAC 173–400–030 for EFSEC’s jurisdiction. We approved identical revisions to WAC 173–400 applicable to Ecology’s jurisdiction on December 28, 2023 (88 FR 89582).

WAC 173–400–070, *Emission standards for certain source categories*. Most subsections apply to source categories not regulated by EFSEC, the EPA previously only approved subsection (5) *Catalytic Cracking Units* into the SIP for EFSEC’s jurisdiction (82 FR 24533, May 30, 2017). EFSEC is now requesting removal of their adoption by reference of WAC 173–400–070 in the SIP because subsection (5) is obsolete and to reduce unnecessary duplication of Federal requirements as corresponding Federal regulations, which the State adopts by reference, have more stringent requirements.²⁴ For

these reasons, the EPA is proposing to approve the removal of WAC 173–400–070 for EFSEC’s jurisdiction.

WAC 173–400–081, *Emission limits during startup and shutdown*. As described in our most recent approval of WAC 173–400–081 (88 FR 89582, December 28, 2023) which EFSEC adopts by reference: 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 the EPA as a SIP amendment. For these reasons, EPA is proposing to approve the submitted revisions to WAC 173–400–081 for EFSEC’s jurisdiction.

WAC 173–400–082 *Alternative emission limit that exceeds an emission standard in the SIP*. As described in our most recent approval of WAC 173–400–082 (88 FR 89582, December 28, 2023) which EFSEC adopts by reference: 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 the EPA approves the new limit into the SIP. For these reasons, the EPA is proposing to approve the submitted revisions to WAC 173–400–082 for EFSEC’s jurisdiction.

WAC 173–400–136 *Use of Emission Reduction Credits (ERC)*. The EPA’s May 30, 2017 (82 FR 24531) approval of EFSEC’s adoption by reference errantly listed April 1, 2011, as the state effective date. The EPA is proposing to correct the state effective date to read December

stringent than the deleted rule that sets it at 0.20 grains/dscf. Similarly, 40 CFR 60.102a (d) provides a formula for setting site-specific opacity limits based on the PM emission rate measured during a source test. We expect this to be lower because of the more stringent PM standard. We deleted this subsection to simplify compliance by reducing duplication of the Federal requirements in our rule.

¹⁶ “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 May 30, 2017 action (82 FR 24533). 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 EFSEC’s jurisdiction in the Washington SIP, and it is those versions that EPA is proposing to revise in this action—the same as we did for Ecology’s and Benton Clean Air Agency’s jurisdiction in our December 28, 2023 approval (88 FR 89582).

¹⁷ See 80 FR 33840, June 12, 2015, specifically page 33842.

¹⁸ “Federally enforceable” was previously codified as WAC 173–400–030(36), state effective December 29, 2012.

¹⁹ See 80 FR 33840, June 12, 2015, especially page 33912.

²⁰ See specifically 40 CFR 63.7575.

²¹ 40 CFR 63.7575.

²² See specifically 40 CFR 63.7575 and 63.11237.

²³ 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 June 15, 2023 SIP submittal prohibit their use as of January 1, 2020.

²⁴ EPA approved removal of WAC 173–400–070(5) *Catalytic Cracking Units* on December 28, 2023, (88 FR 89582) because the Federal rule (40 CFR 60.102a) Washington adopts by reference in WAC 173–400–115 has more stringent requirements for catalytic cracking units than the requirements in the deleted rule. This Federal rule (40 CFR 60.102a) sets a particulate matter emission standard of 0.040 grains/dscf standard, which is significantly more

29, 2012, consistent with our November 7, 2014 (79 FR 66291) approval for Ecology's direct jurisdiction.

WAC 173-400-171 Public notice and opportunity for public comment. As described in our most recent approval of WAC 173-400-171 (88 FR 89582, December 28, 2023) which EFSEC adopts by reference: 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. For these reasons, the EPA is proposing to approve the submitted revisions to WAC 173-400-171 for EFSEC's jurisdiction.

III. Proposed Action

The EPA is proposing to approve and incorporate by reference into the Washington SIP the revisions Washington submitted on June 15, 2023, except for those withdrawn by Washington.²⁵ This action includes removal of WAC 173-400-107—the provision identified as inconsistent with CAA requirements in our 2015 SSM SIP call—from the Washington SIP for EFSEC's jurisdiction, as well as incorporate 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 173-400-030, *Definitions*, (state effective September 16, 2018);
- WAC 173-400-070, *Emission standards for certain source categories*, (state effective September 16, 2018);
- WAC 173-400-081 *Emission limits during startup and shutdown*, (state effective September 16, 2018);
- WAC 173-400-082 *Alternative emission limit that exceeds an emission standard in the SIP*, (state effective September 16, 2018);
- WAC 173-400-136 *Use of Emission Reduction Credits (ERC)*, (state effective December 29, 2012); and
- WAC 173-400-171 *Public Notice and Opportunity for Public Comment*, (state effective September 16, 2018).

The proposed revisions, upon finalization, will apply specifically to the jurisdiction of the Washington State Energy Facility Site Evaluation Council.

IV. Incorporation by Reference

In this document, EPA proposes to include in a final rule, regulatory text

²⁵ 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.

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 is also proposing to remove regulatory text as described in sections II and III of this document that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA proposes to remove WAC 173-400-107 from the incorporation by reference at 40 CFR 52.2470. 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).

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); 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. 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." 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 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: October 11, 2024.

Casey Sixkiller,

Regional Administrator, Region 10.

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