

§ 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1–1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## 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, 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 13563 (76 FR 3821, January 21, 2011);

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

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not proposed for approval to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule proposing to approve Virginia’s submittal addressing the infrastructure requirements of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2015 ozone NAAQS does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

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

Dated: November 21, 2019.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2019–26145 Filed 12–3–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R10–OAR–2019–0635, FRL–10002–87–Region 10]

### Air Plan Approval; Washington; Revised Public Notice Provisions and Other Miscellaneous Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the general air quality regulations submitted by the Washington Department of Ecology. The four categories of revisions to the State Implementation Plan (SIP) proposed for approval in this action are: Revising the adoption by reference date for federal regulations cross referenced in the state regulations; revising the definition of volatile organic compounds (VOC) to match changes to the federal definition; updating public involvement procedures for the new source review air permitting program to reflect changes to the federal requirements, allowing greater use of electronic notice and electronic access to information; and correcting typographical errors and minor wording changes for clarity.

**DATES:** Comments must be received on or before January 3, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2019–0635 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553-0256, or [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

**Table of Contents**

- I. Background
- II. Analysis of Rule Updates
- III. Proposed Action
- IV. Incorporation by Reference
- V. Statutory and Executive Orders Review

**I. Background**

Section 110 of the Clean Air Act (CAA) governs the process by which a state submits air quality requirements to the EPA for approval into the SIP. The SIP is a state’s plan to implement, maintain, and enforce the national ambient air quality standards (NAAQS). Washington’s general air quality regulations are set forth at Chapter 173-400 of the Washington Administrative Code (WAC). On November 5, 2019, the Washington Department of Ecology (Ecology) submitted a SIP revision titled *Revised Public Notice Provisions in Chapter 173-400 Washington Administrative Code and Other Miscellaneous Changes*. This SIP revision includes changes to the public notice process as well as several miscellaneous changes proposed for approval as described below. We note that Ecology’s SIP revision also included miscellaneous changes to the statewide Chapter 173-405 WAC *Kraft Pulping Mills*, Chapter 173-410 WAC *Sulfite Pulping Mills*, and Chapter 173-415 WAC *Primary Aluminum Plants* regulations which we will address in a separate action.

**II. Analysis of Rule Updates**

**A. WAC 173-400-025**

WAC 173-400-025 *Adoption of Federal Rules*, last approved by the EPA on October 6, 2016, adopts by reference the federal air quality regulations as they existed on January 1, 2016 (81 FR 69385). As part of the current submittal,

Ecology revised WAC 173-400-025 to include changes to the federal air quality regulations as of January 24, 2018. This includes, with certain exceptions, Ecology’s adoption by reference of 40 CFR 52.21, which implements the Prevention of Significant Deterioration permitting program. The EPA is proposing to approve this change.

**B. Definition of VOC**

In several actions promulgated between 2012 and 2016, the EPA revised the federal definition of VOC in 40 CFR 51.100(s) to add ten compounds defined as VOC-exempt.<sup>1</sup> In our February 25, 2016, final rule (81 FR 9339), the EPA also eliminated recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements related to t-butyl acetate (also known as tertiary butyl acetate or TBAC; CAS Number: 540-88-5). As part of the current submittal, Ecology revised the definition for “Volatile organic compound (VOC)” in WAC 173-400-030(102) to include all federal updates as of Ecology’s rule adoption.<sup>2</sup> The EPA is proposing to approve this change.

**C. Permitting Public Involvement Requirements**

On October 18, 2016, the EPA revised the public involvement requirements for federal, state, and local permitting programs, including the new source review permitting program (81 FR 71613). The EPA’s final rule removed the mandatory requirement to provide public notice of a draft air permit through publication in a newspaper. Instead, the final rule allows for electronic notice (e-notice), including electronic access to the draft permit (e-access), as an option for permitting authorities implementing EPA-approved programs. The EPA anticipated that e-notice would enable permitting authorities to communicate permitting actions to the public more quickly and efficiently. The EPA further anticipated that e-access would expand access to permit-related documents. Ecology submitted revised versions of WAC 173-400-171 *Public Notice and Opportunity for Public Comment* and WAC 173-400-740 *Permitting Public Involvement Requirements*

<sup>1</sup> See 77 FR 37610 (June 22, 2012), 78 FR 9823 (February 12, 2013), 78 FR 53029 (August 28, 2013), 78 FR 62451 (October 22, 2013), 79 FR 17037 (March 27, 2014), 81 FR 9339 (February 25, 2016), and 81 FR 50330 (August 1, 2016).

<sup>2</sup> On November 16, 2018, the EPA added HFO-1336mzz-Z to the list of compounds excluded from the regulatory definition of volatile organic compounds (83 FR 61127, November 28, 2018).

implementing these changes. A redline/strikeout analysis of the changes is included in the docket for this action. Ecology also added a definition in WAC 173-400-030(26) for the term “electronic means” to support the use of e-notice and e-access. The EPA is proposing to approve the submitted changes. We note that Ecology did not submit, and the EPA is not proposing to approve, WAC 173-400-171 subsections (3)(o), (12), and the portion of (3)(b) related to the regulation of toxic air pollutants, because these subsections are outside the scope of this current action.

**D. Typographical Corrections and Stylistic Changes**

As part of the *Revised Public Notice Provisions in Chapter 173-400 Washington Administrative Code and Other Miscellaneous Changes* submittal, Ecology submitted several non-substantive typographical and stylistic updates to WAC 173-400-030 *Definitions*, WAC 173-400-040 *General Standards for Maximum Emissions*, WAC 173-400-050 *Emission Standards for Combustion and Incineration Units*, WAC 173-400-060 *Emission Standards for General Process Units*, and WAC 173-400-105 *Records, Monitoring, and Reporting*. A redline/strikeout of the changes is included in the docket for this action. We note that Ecology did not submit all changes to Chapter 173-400 WAC as part of this current update. Specifically, Ecology submitted non-substantive revisions to WAC 173-400-030 subsections: (5), (13), (18), (29), (30), (35), (48), (53), (56), (59), (62), (72), (74), (82), (90), (91), (94), and (105). We note that Ecology renumbered many of the definitions contained in WAC 173-400-030 since our last approval (79 FR 59653, October 3, 2014). As noted in the proposed rulemaking for our October 3, 2014, final action, Ecology did not submit for approval the definition of “Toxic air pollutant (TAP)” or “toxic air contaminant” contained in WAC 173-400-030(91), because these pollutants are not criteria pollutants or EPA-identified precursors under section 110 of the CAA.<sup>3</sup> This definition was subsequently renumbered to WAC 173-400-030(96) and was again not submitted for approval. We also note that Washington did not submit as part of this SIP revision several new definitions added to WAC 173-400-030. Specifically, these definitions are WAC 173-400-030 subsections: (6), (45), (83), (89), (97), (100), (103) and (104). Ecology also did not submit as part of this SIP revision, changes to the definitions in

<sup>3</sup> 79 FR 39351, July 10, 2014, at page 39352.

subsections (30) and (36), subsequently renumbered to (32) and (38). Therefore, the EPA will retain the definitions last approved on October 3, 2014 (79 FR 59653). Similarly, Ecology submitted non-substantive changes to WAC 173-400-040 subsection (1) but did not submit the more substantive changes to subsection (2) as part of this update.<sup>4</sup> The EPA will retain the version of WAC 173-400-040(2) last approved on October 6, 2016 (81 FR 69386). We also note that our prior approval of WAC 173-400-040 did not include subsections (3) and (5), which were also not submitted as part of this update. Other non-substantive revisions submitted for approval include clarifying changes to WAC 173-400-050 subsection (1), WAC 173-400-060, and WAC 173-400-105, which are included in the docket for this action.

#### E. Benton Clean Air Agency

As discussed in our November 17, 2015 final approval, Benton Clean Air Agency (BCAA) generally uses Chapter

173-400 WAC for program implementation, with certain exceptions (80 FR 71695). Ecology requested that the EPA approve the Chapter 173-400 WAC revisions discussed above to apply within BCAA's jurisdiction, with one exception. BCAA does not implement WAC provisions related to the Prevention of Significant Deterioration permitting program under 173-400-700 through 173-400-750. Therefore, Ecology did not request approval of WAC 173-400-740 *Permitting Public Involvement Requirements* for BCAA's direct permitting jurisdiction. We also note that in our November 17, 2015, final approval, BCAA Regulation I, sections 4.01(A) and 4.01(B) replaced the WAC 173-400-030 definitions for "fugitive dust" and "fugitive emissions." These two definitions were renumbered in the most recent rule revision to WAC 173-400-030(40) and (41), respectively. Similarly, in our prior approval, BCAA sections 4.02(B), 4.02(C)(1), and 4.02(C)(3) replaced WAC 173-400-040 subsections (4), (9)(a), and

(9)(b), respectively. We are proposing to revise our approval of the Benton Clean Air Agency regulations accordingly.

We are also proposing to correct a typographical error from a previous approval. In our November 17, 2015 final approval, we approved WAC 173-400-081 (state effective April 1, 2011) to apply in BCAA's jurisdiction. In a subsequent final action published October 6, 2016 (81 FR 69389), our prior approval of WAC 173-400-081 was inadvertently deleted from 40 CFR 52.2470(c), Table 4—Additional Regulations Approved for Benton Clean Air Agency (BCAA) Jurisdiction. We are proposing to amend 40 CFR 52.2470 to correct this error.

#### III. Proposed Action

We are proposing to approve and incorporate by reference in the Washington SIP at 40 CFR 52.2470(c) the following revisions as shown in the table below. We are also proposing to correct 40 CFR 52.2470 for BCAA's jurisdiction, as discussed above.

State citation	Title/subject	State effective date	Explanations
<b>40 CFR 52.2470(c), TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION</b>			
<b>Washington Administrative Code, Chapter 173-400—General Regulations for Air Pollution Sources</b>			
173-400-025 .....	Adoption of Federal Rules.	9/16/18	
173-400-030 .....	Definitions .....	9/16/18	Except: 173-400-030(6); 173-400-030(32); 173-400-030(38); 173-400-030(45); 173-400-030(83); 173-400-030(89); 173-400-030(96); 173-400-030(97); 173-400-030(100); 173-400-030(103); 173-400-030(104).
173-400-040 .....	General Standards for Maximum Emissions.	9/16/18	Except: 173-400-040(2); 173-400-040(3); 173-400-040(5).
173-400-050 .....	Emission Standards for Combustion and Incineration Units.	9/16/18	Except: 173-400-050(2); 173-400-050(4); 173-400-050(5); 173-400-050(6).
173-400-060 .....	Emission Standards for General Process Units.	11/25/18	
173-400-105 .....	Records, Monitoring, and Reporting.	11/25/18	
173-400-171 .....	Public Notice and Opportunity for Public Comment.	9/16/18	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(3)(o); 173-400-171(12).
173-400-740 .....	PSD Permitting Public Involvement Requirements.	9/16/18	
<b>40 CFR 52.2470(c), TABLE 4—ADDITIONAL REGULATIONS APPROVED FOR BENTON CLEAN AIR AGENCY (BCAA) JURISDICTION</b>			
<b>Washington Administrative Code, Chapter 173-400—General Regulations for Air Pollution Sources</b>			
173-400-025 .....	Adoption of Federal Rules.	9/16/18	
173-400-030 .....	Definitions .....	9/16/18	Except: 173-400-030(6); 173-400-030(32); 173-400-030(38); 173-400-030(40); 173-400-030(41); 173-400-030(45); 173-400-030(83); 173-400-030(89); 173-400-030(96); 173-400-030(97); 173-400-030(100); 173-400-030(103); 173-400-030(104).

<sup>4</sup> Ecology also revised WAC 173-400-040 subsection (7), however the revised text was not part of the SIP.

State citation	Title/subject	State effective date	Explanations
173-400-040 .....	General Standards for Maximum Emissions.	9/16/18	Except: 173-400-040(2); 173-400-040(3); 173-400-040(4); 173-400-040(5); 173-400-040(9).
173-400-050 .....	Emission Standards for Combustion and Incineration Units.	9/16/18	Except: 173-400-050(2); 173-400-050(4); 173-400-050(5); 173-400-050(6).
173-400-060 .....	Emission Standards for General Process Units.	11/25/18	
173-400-105 .....	Records, Monitoring, and Reporting.	11/25/18	
173-400-171 .....	Public Notice and Opportunity for Public Comment..	9/16/18	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(3)(o); 173-400-171(12).

#### IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulations in section III above and correct the typographical error discussed in section II.E. in this preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov).

#### V. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). 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. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated March 21, 2018.

#### 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: November 22, 2019.

**Chris Hladick,**

*Regional Administrator, Region 10.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

**[EPA-R10-OAR-2019-0636: FRL-10002-84-Region 10]**

#### Air Plan Approval; WA; Updates to Source-Category Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Washington State Implementation Plan (SIP) that were submitted by the Department of Ecology (Ecology). In 1991, Ecology established source-category regulations for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. These source-category regulations contain requirements specific to these types of facilities. However, the source-category regulations also rely upon cross-references to the general air quality regulations to implement program