



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0568, FRL-10001-57-Region 10]

Air Plan Approval; Washington; Update to the Adoption by Reference, Energy Facility Site Evaluation Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the Washington State Implementation Plan (SIP) to approve updates to the Energy Facility Site Evaluation Council (EFSEC) air quality regulations. The EFSEC regulations apply to major energy facilities in the State of Washington and establish permitting requirements and emissions standards for such facilities. The EFSEC regulations primarily adopt by reference the Washington Department of Ecology (Ecology) general air quality regulations for program implementation. We are proposing to approve EFSEC's updated adoption by reference to include certain changes to Ecology's general air quality regulations since EFSEC's last adoption by reference, consistent with prior approvals.

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-2018-0568 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 at (206) 553-0256, or hunt.jeff@epa.gov.

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

I. Background

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). The EFSEC air quality regulations are contained in Chapter 463-78 Washington Administrative Code (WAC) *General and Operating Permit Regulations for Air Pollution Sources*. These EFSEC regulations rely primarily on the adoption by reference of the corresponding Ecology general air quality regulations contained in Chapter 173-400 WAC *General Regulations for Air Pollution Sources*, with certain exceptions discussed below.

As discussed in our prior approval of the EFSEC regulations on May 30, 2017 (82 FR 24531), EFSEC's adoption by reference of Chapter 173-400 WAC is modified in several ways. First, references in Chapter 173-400 WAC regarding appeals are modified to reflect EFSEC's independent appeals process in WAC 463-78-140. Second, the cross references to fees under Chapter 173-455 WAC are modified to reflect EFSEC's independent fee structure set out in Chapter 80.50 RCW. Third, while EFSEC generally adopts most of the provisions of Chapter 173-400 WAC by reference, not all provisions are included.

EFSEC did not adopt by reference the enforcement and authority provisions contained in WAC 173-400-220 through 260. For these provisions, EFSEC relies on its own independent authorities, which are currently part of Washington's federally-approved SIP under WAC 463-78-135 through 230. In other cases, such as WAC 173-400-118 *Designation of Class I, II, and III Areas*, WAC 173-400-151 *Retrofit Requirements for Visibility Protection*, and parts of WAC 173-400-070 *Emission Standards for Certain Source Categories*, EFSEC did not adopt these Chapter 173-400 WAC provisions by reference because they pertain to source categories or authorities outside the scope of EFSEC's jurisdiction.

Lastly, many parts of Chapter 173-400 WAC contain provisions that are not related to the criteria pollutants regulated under title I of the CAA, not related to the requirements for SIPs under section 110 of the CAA, or not changed since the EPA's last approval. For this reason, EFSEC's previous SIP revision, submitted on December 20, 2016, requested approval for only those parts of Chapter 173-400 WAC consistent with the EPA's October 3, 2014 (79 FR 59653), November 7, 2014 (79 FR 66291), and April 29, 2015 (80 FR 23721) approvals.

II. Washington SIP Revisions

On September 30, 2019, Ecology submitted EFSEC’s updated adoption by reference of Chapter 173-400 WAC as an appendix to Ecology’s SIP revision, *National Ambient Air Quality Standards: Infrastructure State Implementation Plan for 2015 Ozone and 2010 Sulfur Dioxide*, to demonstrate that the state has adequate infrastructure (statutory, regulatory, and programmatic authority) to implement revised air quality standards.¹ The updated adoption by reference was submitted primarily to bring EFSEC’s regulatory program current with the most recent update Ecology made to Chapter 173-400-025 WAC “Adoption of federal rules” which adopts by reference the federal rules as they existed on January 24, 2018. However, the specific Chapter 173-400 WAC provisions adopted by reference, and submitted to the EPA for approval, also include changes to Chapter 173-400 WAC approved by the EPA on October 6, 2016 (81 FR 69385) and other recent changes to Chapter 173-400 WAC contained in the proposed SIP revision submittal *Revised Public Notice Provisions and Other Changes to Chapters 173-400, 173-405, 173-410, and 173-415 WAC*, included in the docket for this action.

III. Proposed Action

The EPA proposes to approve and incorporate by reference into the Washington SIP the revised EFSEC regulations listed in Table 1 and the corresponding updates to EFSEC’s adoption by reference in Table 2.

Table 1: Energy Facilities Site Evaluation Council (EFSEC) Regulations for Proposed Approval and Incorporation by Reference

State citation	Title/subject	State effective date	Explanations
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¹ The EPA intends to act on the remainder of Ecology’s infrastructure SIP revision separately.

Chapter 463-78 WAC, General and Operating Permit Regulations for Air Pollution Sources			
78-005	Adoption by Reference	8/26/19	Subsection (1) only. See the table below for updated Chapter 173-400 WAC provisions adopted by reference and submitted to the EPA for approval.

Table 2: Revised Chapter 173-400 WAC Regulations Adopted by Reference in WAC 463-78-005²

State citation	Title/subject	State effective date	Explanations
Washington Administrative Code, Chapter 173-400 – General Regulations for Air Pollution Sources			
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).

² Many of the provision of Chapter 173-400 WAC adopted by reference remain unchanged since the EPA's last approval of EFSEC's regulations and were not resubmitted as part of the September 30, 2019 SIP revision. Other revised Chapter 173-400 WAC provisions were not submitted for approval as part of this current SIP update.

173-400-060	Emission Standards for General Process Units	11/25/18	
173-400-105	Records, Monitoring, and Reporting	11/25/18	
173-400-111	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources	07/01/16	Except: 173-400-111(3)(h); The part of 173-400-111(8)(a)(v) that says, • “and 173-460-040,”; 173-400-111(9).
173-400-116	Increment Protection	07/01/16	
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).
173-400-710	Definitions	07/01/16	
173-400-720	Prevention of Significant Deterioration (PSD).	07/01/16	Except: 173-400-720(4)(a)(i through iv) and 173-400-720(4)(b)(iii)(C).
173-400-730	Prevention of Significant Deterioration Application Processing Procedures.	07/01/16	
173-400-740	PSD Permitting Public Involvement Requirements	9/16/18	
173-400-810	Major Stationary Source and Major Modification Definitions	07/01/16	
173-400-830	Permitting Requirements	07/01/16	
173-400-840	Emission Offset Requirements	07/01/16	

173-400-850	Actual Emissions Plantwide Applicability Limitation (PAL)	07/01/16	
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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 listed in section III of this proposal. The EPA has made, and will continue to make, these materials generally available through 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 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 May 16, 2019.

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 16, 2019.

Chris Hladick,
Regional Administrator,
Region 10.

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