**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R10–OAR–2014–0755: FRL–9921–20–Region 10]**

## Approval and Promulgation of Implementation Plans; Washington: Prevention of Significant Deterioration and Visibility Protection

**AGENCY:** Environmental Protection Agency.

**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) on January 27, 2014. These revisions implement the preconstruction permitting regulations for large industrial (major source) facilities in attainment and unclassifiable areas, called the Prevention of Significant Deterioration (PSD) program. Currently, the PSD program in Washington is operated under a Federal Implementation Plan (FIP). If finalized, the EPA's proposed approval of Ecology's PSD program would narrow the current FIP to include only those few facilities, emission categories, and geographic areas for which Ecology does not have PSD permitting jurisdiction. The EPA is also proposing to approve Ecology's visibility protection permitting program which overlaps significantly with the PSD program in most cases.

**DATES:** Comments must be received on or before February 6, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2014–0755, by any of the following methods:

A. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

B. *Mail:* Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT–150), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

C. *Email: R10-Public_Comments@epa.gov.*

D. *Hand Delivery:* EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT–150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R10–OAR–2014–0755. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI 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 either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov,* or by using the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we'', ''us'' or ''our'' are used, it is intended to refer to the EPA.

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### I. Background for Proposed Action

On January 27, 2014, Ecology submitted revisions to update the general air quality regulations contained in Chapter 173–400 of the Washington Administrative Code (WAC) that apply to sources within Ecology's jurisdiction, including minor new source review, major source nonattainment new source review (major NNSR), PSD, and the visibility protection (visibility) program. On October 3, 2014, the EPA finalized approval of provisions contained in Chapter 173–400 WAC that apply generally to all sources under Ecology's jurisdiction, but stated that we would act separately on the major source-specific permitting programs in a phased approach (79 FR 59653). On November 7, 2014, the EPA finalized the second phase in the series, approving the major NNSR regulations contained in WAC 173–400–800 through 173–400–860, as well as other parts of Chapter 173–400 WAC that support major NNSR (79 FR 66291).

In this proposal, the third and final phase in the series, the EPA is proposing to approve the remainder of Ecology's January 27, 2014 submittal, covering the PSD and visibility requirements for major stationary sources under Ecology's jurisdiction.

Because the State of Washington does not currently have a SIP-approved PSD program, the EPA is currently the Clean Air Act (CAA) PSD permitting authority in the State, although Ecology has issued most CAA PSD permits in the State since 1983 under a delegation agreement with the EPA. See Agreement for Partial Delegation of Source Review under the Federal Prevention of Significant Deterioration (PSD) Regulations by the United States Environmental Protection Agency, Region 10, to the Washington Department of Ecology, dated December 10, 2013 (2013 Delegation Agreement). Approval of Ecology's PSD rules into the SIP will transfer CAA PSD permitting authority from the EPA to Ecology except for those few facilities, emissions categories, and geographic areas for which Ecology does not have permitting jurisdiction, as described in Section IV below. The EPA is also currently the visibility permitting authority in the State although Ecology has issued the visibility permits to sources in attainment or unclassifiable areas under its delegation from the EPA. However, the EPA is currently the only visibility permitting authority for new and modified major stationary sources in nonattainment areas pursuant to 40 CFR 52.2498(b). Approval of Ecology's visibility permitting rules into the SIP will also transfer to Ecology CAA visibility permitting authority, consistent with the exceptions described in Section IV below. The EPA is also proposing to narrow the current PSD FIP contained in 40 CFR 52.2497 and the visibility permitting FIP contained in 40 CFR 52.2498 to be consistent with the scope of this SIP approval, as also described in Section IV below. The EPA will retain an oversight role with respect to Ecology's PSD and visibility permitting program if this SIP approval is finalized as proposed.

## II. Washington SIP Revisions

The specific requirements applicable to SIP-approved PSD programs are set forth in 40 CFR 51.166. The EPA's FIP for implementing PSD in areas where states do not have SIP-approved PSD programs is set forth in 40 CFR 52.21. As explained in more detail below, Ecology has, with limited exceptions, incorporated by reference the EPA's PSD FIP at 40 CFR 52.21 as in effect on August 13, 2012, to meet the requirements of 40 CFR 51.166.

### *A. WAC 173–400–110, New Source Review (NSR) for Sources and Portable Sources; WAC 173–400–111, Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources; WAC 173–400–112, Requirements for New Sources in Nonattainment Areas—Review for Compliance With Regulations; and WAC 173–400–113 New Sources in Attainment or Unclassifiable Areas—Review for Compliance With Regulations*

As described in more detail in the EPA's July 10, 2014 proposal (79 FR 39351) and October 3, 2014 final action (79 FR 59653), WAC 173–400–110 through WAC 173–400–113 are the starting points for any source seeking to construct a new source or modify an existing source under Ecology's rules, whether major or minor. Specific provisions in these sections direct sources constructing a ''major'' source or making a ''major modification'' to a ''major'' source in an attainment or unclassifiable area to also comply with the PSD requirements of WAC 173–400–700 through WAC 173–400–750. WAC 173–400–110 through WAC 173–400–113 also require major sources and major modifications to comply with the visibility permitting requirements of WAC 173–400–117 for all areas, including nonattainment areas. See, for example, WAC 173–400–110(1)(d) for PSD and WAC 173–400–111(1)(c) for visibility. As discussed in the EPA's July 2014 proposal, the EPA's review of WAC 173–400–110 through 173–400–113 expressly did not include a determination that these revised regulations meet requirements for approval of a SIP-approved PSD or visibility permitting program. In this action, we are proposing to approve WAC 173–400–110 through 173–400–113 for purposes of implementing the PSD and visibility permitting programs because these provisions require compliance with WAC 173–400–700 through 173–400–750 (which, as discussed below, are consistent with the CAA requirements for a PSD permitting program) and WAC 173–400–117 (which, as discussed below, is consistent with the CAA requirements for visibility).[1]

[1] This proposed approval for PSD purposes is subject to the exceptions and explanations described in the EPA's July 10, 2014 proposal (79 FR 39351) and October 3, 2014 final action (79 FR 59653) of WAC 173–400–110, 173–400–111, and 173–400–113.

### *B. WAC 173–400–700, Review of Major Stationary Sources of Air Pollution*

As described in more detail in the EPA's July 10, 2014 proposal and October 3, 2014 final action, Ecology shares permitting jurisdiction with seven local clean air agencies and one other state agency, the Energy Facilities Site Evaluation Council (EFSEC). WAC 173–400–700, in conjunction with WAC 173–400–020, describes how Ecology's regulations apply in the local and EFSEC jurisdictions with respect to PSD. WAC 173–400–700 states that Ecology's PSD regulations contained in WAC 173–400–700 through 173–400–750 apply statewide except where a local clean air agency has received delegation of the Federal PSD program from the EPA or has a SIP-approved PSD program. WAC 173–400–700 also states that Ecology's PSD program, under WAC 173–400–700 through 173–400–750, excludes projects under the jurisdiction of the EFSEC pursuant to Chapter 80.50 Revised Code of Washington (RCW). At this time, no local clean air agencies in Washington have a delegated or SIP-approved PSD program. Therefore, the EPA proposes to approve Ecology's PSD program, contained in WAC 173–400–700 through 173–400–750, as applying statewide except for those facilities under EFSEC jurisdiction and other emission categories and geographic areas for which Ecology does not have jurisdiction, as discussed below in Section IV.C. *Scope of Proposed Action.*

### *C. WAC 173–400–710, Definitions*

WAC 173–400–710(a) states that for purposes of WAC 173–400–720 through 173–400–750 the definitions in 40 CFR 52.21(b), adopted by reference in WAC 173–400–720(4)(a)(vi), shall apply, except for the definition of ''secondary emissions.'' In the case of secondary emissions, Ecology uses the general definition contained in WAC 173–400–030, which is consistent with the court decision in *Natural Resources Defense Council* v. *U.S. EPA,* 725 F2d 761 (D.C. Cir. 1984) and which the EPA approved as part of the Washington SIP on October 3, 2014 (79 FR 59653). WAC 173–400–710(b) makes clear that the term ''source'' in WAC 173–400–710 through 173–400–750, and in 40 CFR 52.21 as adopted by reference in Ecology's regulations, is to be interpreted to mean ''stationary source'' as defined in 40 CFR 52.21(b)(5). Under this definition, a stationary source (or source) does not include emissions resulting directly from an internal combustion engine for transportation purposes, from a nonroad engine, or a

nonroad vehicle as defined in CAA section 216.

There are also several important distinctions between the applicability of Ecology's minor NSR program and its PSD program that arise from the State's definitions of the terms ''modification'' in WAC 173–400–030(48) and ''major modification'' in WAC 173–400–710 and –720, which adopt the federal definitions in 40 CFR 52.21(b)(2) for Ecology's PSD program. First, the applicability test for ''modifications'' under Ecology's minor NSR program is based on the definition of modification in CAA section 111(a)(4) and the EPA's implementing rules at 40 CFR 60.14, specifically, that a modification is an increase in the emission rate of an existing facility in terms of kilograms per hour. See WAC 173–400–030(48). In contrast, the applicability test for Ecology's PSD program is based on a ''major modification'' which is, consistent with the Federal PSD program, based on a comparison of ''baseline actual emissions'' before the change to ''projected actual emissions'' after the change in terms of tons per year. See WAC 173–400–710(a) and 400–173–720(4)(a)(iv), which adopt by reference the definitions in 40 CFR 52.21(b)(2). Thus, for any physical or operational change at an existing stationary source, regulated sources and permitting authorities will need to calculate emission changes in terms of both kilograms per hour and tons per year to determine whether changes are subject to minor NSR, PSD, or both. Second, under Ecology's minor NSR program, new source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. See WAC 173–400–110(1)(d) (''New source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.''). In contrast, under Ecology's PSD program, as under the Federal PSD program, Ecology must determine whether the sum of increases in emissions from new and modified units is ''significant'' and if so, whether there is a net significant emissions increase from all contemporaneous emissions increases and decreases at the major stationary source. See WAC 173–400–110(1)(d) (''Review of a major modification must comply with WAC 173–400–700 through 173–400–750 or 173–400–800 through 173–400–860, as applicable.'') and WAC 173–400–720 (adopting by reference 40 CFR 52.21(a)(2), 52.21(b)(2), and 52.21(b)(3)).

The EPA reviewed Ecology's submission and is proposing to approve the definitions contained in WAC 173–400–710 as consistent with the CAA requirements for a SIP-approved PSD program.

*D. WAC 173–400–720, Prevention of Significant Deterioration (PSD)*

WAC 173–400–720 generally incorporates by reference the Federal PSD program contained in 40 CFR 52.21, in effect as of August 13, 2012. Exceptions to the incorporation by reference are listed in WAC 173–400–720(4)(b). First, WAC 173–400–720(4)(b)(i) clarifies when use of the word ''Administrator'' as part of the incorporation by reference refers to Ecology versus those specific provisions where ''Administrator'' continues to refer to the EPA Administrator. Second, WAC 173–400–720(4)(b)(ii) excludes the PSD Class I area variance provisions contained in 40 CFR 52.21(p)(5) through (8), making the Ecology program more stringent than the Federal PSD program. WAC 173–400–720(4)(b)(ii) also reflects Ecology's use of the state public participation procedures in WAC 173–400–740, *PSD Permitting Public Involvement Requirements* rather than incorporating by reference the Federal public participation requirements in 40 CFR 52.21(q). Third, WAC 173–400–720(4)(b)(iii)(A) reflects the size threshold in CAA section 169(1) for municipal waste incinerators of 50 tons of refuse per day, rather than incorporating by reference the threshold contained in 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(h) of 250 tons of refuse per day, which has not been revised in the EPA's regulations to reflect the CAA statutory change. Fourth, WAC 173–400–720(4)(b)(iii)(B) modifies the definition of ''significant'' contained in 40 CFR 52.21(b)(23)(i) to include a threshold for ozone depleting substances of 100 tons per year consistent with EPA guidance. See, *e.g.,* Letter dated March 19, 1998 from John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards, to Mr. Kevin Tubbs, Director of Environmental Technology, American Standard. Fifth, WAC 173–400–720(4)(b)(iii)(D) and (E) modify the incorporation by reference of 40 CFR 52.21(r) *Source Obligation* to reflect state reporting requirements which are more stringent than the Federal PSD program. Sixth, WAC 173–400–720(4)(b)(iii)(F) through (J) modify the incorporation by reference of 40 CFR 52.21(aa) *Actuals PALs* to reflect state procedures but make no changes less stringent than the Federal PSD program. Lastly, in WAC 173–400–720(4)(b)(iv) Ecology does not incorporate by reference 40 CFR 52.21(r)(2) because state construction time limitation procedures consistent with the Federal PSD program are contained in WAC 173–400–730, *Prevention of Significant Deterioration Application Processing Procedures.* The EPA reviewed these exceptions to the incorporation by reference of the Federal regulations and is proposing to approve them as consistent with the CAA.

In addition to these exceptions to Ecology's incorporation by reference of 40 CFR 52.21, two other issues merit further discussion. First, in response to recent court decisions, Ecology has not included in, or has withdrawn from, its SIP submittal, incorporation by reference of 40 CFR 52.21(i)(5)(i)(c), 52.21(k)(2), and 52.21(b)(49)(v). These provisions, therefore, are not before the EPA for approval and would not be part of the Washington SIP if this action is finalized. Please refer to Section III below for a detailed discussion of the court decisions and why the exclusion of these provisions from Ecology's SIP-approved PSD program is consistent with CAA requirements.

Second, WAC 173–400–720(4)(b)(iii)(C) contains an inadvertent typographical error. Ecology intended to reference the concentrations listed in WAC 173–400–116(3) rather than WAC 173–400–116(2). To avoid confusion, the EPA is excluding WAC 173–400–720(4)(b)(iii)(C) from our proposed approval. However, exclusion of WAC 173–400–720(4)(b)(iii)(C) from the SIP has no substantive effect because it was merely a pointer to the provisions of WAC 173–400–116(3) which are consistent with the CAA and proposed for approval into the SIP, as discussed in Section II.H below. Ecology has advised the EPA correction of this error will be made as soon as practicable.

In addition to incorporating by reference pertinent portions of 40 CFR 52.21, WAC 173–400–720 also contains provisions relating to enforcement authority. Subparagraph (3) provides that both Ecology and any local air permitting authority with jurisdiction over a source are authorized to enforce the requirement to apply for a PSD permit if one is required and the conditions of a PSD permit. The EPA is proposing to approve WAC 173–400–720 as consistent with the CAA requirements for a SIP-approved PSD program.

*E. WAC 173–400- 730, Prevention of Significant Deterioration Application Processing Procedures*

This section contains Ecology's permit application and processing procedures. These procedures are based on the EPA requirements contained in 40 CFR 51.166(q) and includes requirements for the processing of permit applications, completeness determinations, issuance of final permits, and permit appeals. This section also includes procedures for permit extensions. As discussed above, Ecology has excluded from adoption by reference in WAC 173–400–720 the extension provision of 40 CFR 52.21(r)(2). That provision authorizes the EPA to grant extensions to the 18-month construction time limitation in 40 CFR 52.21(r)(2) ''upon a satisfactory showing that an extension is justified,'' but that provision does not provide any specific criteria or required process that must be satisfied before the EPA can exercise its discretion to determine that a permit extension should be granted. The EPA has recently issued guidance for the EPA and states with delegated PSD programs to clarify the EPA's views on what constitutes an adequate justification for an extension of the 18-month timeframe under 40 CFR 52.21(r)(2) for commencing construction of a source that has been issued a PSD permit. See Memorandum from Stephen D. Page, Director of EPA's Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region 1–10, Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2), dated January 31, 2014 (Extension Guidance).

Similar to the Federal PSD regulations at 40 CFR 52.21(r)(2), Ecology's PSD regulations provide that approval to construct or modify a major stationary source becomes invalid if construction is not commenced within eighteen months of the effective date of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. Ecology has also included in WAC 173–400–730(5)(b) provisions setting forth the criteria and procedures that apply to sources requesting and Ecology in granting extensions to the 18-month time period. These provisions are generally consistent with, but in some respects more stringent than, EPA's Extension Guidance. The EPA reviewed Ecology's permit application processing procedures, including the extension provisions, and is proposing to approve them as consistent with the CAA.

*F. WAC 173–400–740, PSD Permitting Public Involvement Requirements and WAC 173–400–171, Public Notice and Opportunity for Public Comment*

WAC 173–400–740 sets out the public participation procedures for Ecology's PSD program based on the EPA requirements contained in 40 CFR 51.166(q). The SIP-approved provisions of WAC 173–400–171, which apply to Ecology minor source and major NNSR permitting actions, do not apply to permits issued under the PSD program. Instead, WAC 173–400–171(1)(a) refers all actions regulated by WAC 173–400–700 through 173–400–750 to the public participation procedures of WAC 173–400–740. That regulation requires Ecology to, among other things, provide an opportunity for public comment and hearing, make relevant information regarding a PSD permit application and Ecology's preliminary determination on an application available to the public, send a copy of the notice of public comment to the applicant, the EPA, and other identified entities, consider all timely public comments in issuing a final determination, and provide notice of the final determination to specified entities.

WAC 173–400–171 does apply, however, to any visibility-related elements for permits subject to major NNSR requirements under WAC 173–400–800 through WAC 173–400–860. The EPA is proposing to find that WAC 173–400–740 and WAC 173–400–171 meet the CAA requirements for public participation for both the PSD and visibility permitting programs.

*G. Section 173–400–750, Revisions to PSD Permits*

WAC 173–400–750 contains procedures for revisions to PSD permits. Under this regulation, except in the case of certain categories of revisions identified as ''administrative,'' revisions to PSD permits are subject to the same public participation requirements that apply to initial issuance of PSD permits. In addition, prior to revising a PSD permit, Ecology must find, among other things, that no ambient air quality standard or PSD increment will be exceeded as a result of the change, the change will not adversely impact the ability of Ecology to determine compliance with an emissions standard, and the revised PSD permit will continue to require Best Available Control Technology (BACT) for each new or modified emission unit approved by the original PSD permit. Revisions that qualify as ''administrative'' under Ecology's regulation are subject to the same substantive requirements as non-administrative revisions but are not subject to Ecology's public involvement requirements. The changes Ecology has characterized as administrative are similar to the changes the EPA has characterized as administrative or minor under the Title V permit program and for which public notice and comment is not required. See 40 CFR 70.7(d) and (e)(2).

Neither the EPA's PSD FIP at 40 CFR 52.21, nor the EPA's regulations for SIP-approved PSD programs at 40 CFR 51.166, has explicit provisions for revisions to PSD permits. The authority to revise permits, however, is a necessary function of administering a permitting program, and Ecology's regulations contain appropriate safeguards on such revisions. The EPA reviewed WAC 173–400–750 and is proposing to approve it as consistent with the CAA.

*H. WAC 173–400–116, Increment Protection*

WAC 173–400–116 establishes Ecology's PSD increment protection criteria. In particular, WAC 173–400–116(3) establishes the exclusions from increment consumption allowed under 40 CFR 51.166(f). These exclusions include concentrations of particulate matter, $PM_{10}$ or $PM_{2.5}$ attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by a revision to the SIP approved by the EPA, if certain criteria are met. All three of these exclusions mirror the language contained in 40 CFR 51.166. Therefore, the EPA is proposing to approve WAC 173–400–116 as consistent with the CAA.

*I. WAC 173–400–117, Special Protection Requirements for Federal Class I Areas*

WAC 173–400–117 consolidates in one section many of the requirements for new or modified major sources that would impact Federal Class I areas, including the visibility permitting program. This includes the air quality related values (including visibility) requirements that support implementation of 40 CFR 52.21(p)(1) through (4) for PSD actions in attainment and unclassifiable areas, as

incorporated by reference in WAC 173–400–720. WAC 173–400–117 also includes the new source review visibility permitting requirements of 40 CFR 51.307 that cover all areas, including attainment, unclassifiable, and nonattainment areas. The EPA reviewed WAC 173–400–117 and has determined that these provisions are consistent with the requirements for state plans in 40 CFR 51.166(p) and 40 CFR 51.307. Therefore, the EPA proposes to approve WAC 173–400–117 as applying statewide except for those facilities under EFSEC jurisdiction and other emission categories and geographic areas for which Ecology does not have jurisdiction, as discussed below in Section IV.C. *Scope of Proposed Action.*

*J. Personnel, Funding, and Authority*

Section 110(a)(2)(E)(i) of the CAA requires that states have adequate personnel, funding, and authority under state law to carry out a SIP. Ecology's authority under state law to carry out the PSD program is discussed above. With respect to personnel and funding, Ecology has been issuing CAA PSD permits under a full or partial delegation agreement with the EPA since 1983. The staff of engineers and air quality modelers who supported Ecology in its issuance of PSD permits under a delegation agreement with the EPA will continue to support Ecology's issuance of PSD permits under a SIP-approved PSD program. The EPA therefore proposes to find that Ecology has adequate personnel, funding, and authority to implement the PSD program in Washington.

## III. Effect of Recent Court Decisions Vacating and Remanding Certain Federal Rules

*A. Sierra Club v. EPA*

As discussed in Section II above, Ecology's PSD program generally incorporates by reference the Federal PSD permitting provisions in 40 CFR 52.21, in effect as of August 13, 2012. This version of 40 CFR 52.21 includes 40 CFR 52.21(i) (relating to the significant monitoring concentration (SMC)) and 40 CFR 52.21(k) (relating to the significant impact level (SIL)) that added a SMC and SIL for fine particulate matter as part of the EPA's final rule *Prevention of Significant Deterioration for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels and Significant Monitoring Concentration* (2010 PSD $PM_{2.5}$ Implementation Rule) (75 FR 64864, October 20, 2010).

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club* v. *EPA,* 703 F.3d 458 (D.C. Cir. 2013), issued, with respect to the SMC, a judgment that, inter alia, vacated the provisions adding the $PM_{2.5}$ SMC to the Federal regulations at 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c). In its decision, the Court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. Thus, although the $PM_{2.5}$ SMC was not a required element of a state's PSD program, where a state PSD program contains such a provision and allows issuance of new permits without requiring ambient $PM_{2.5}$ monitoring data, such application of the vacated SMC would be inconsistent with the Court's decision and the requirements of section 165(e)(2) of the CAA.

At the EPA's request, the decision also vacated and remanded to the EPA for further consideration the portions of the 2010 PSD $PM_{2.5}$ Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for $PM_{2.5}$. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for $PM_{2.5}$ because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. We also note that the Court's decision does not affect the PSD increments for $PM_{2.5}$ promulgated as part of the 2010 PSD $PM_{2.5}$ Implementation Rule. The EPA recently amended its regulations to remove the vacated $PM_{2.5}$ SILs and SMC provisions from the PSD regulations (78 FR 73698, December 9, 2013). The EPA will initiate a separate rulemaking in the future regarding the $PM_{2.5}$ SILs that will address the Court's remand. In the meantime, the EPA is advising states to begin preparations to remove the vacated provisions from state PSD regulations.

In response to the vacatur of the EPA regulations as they relate to the $PM_{2.5}$ SMC and the $PM_{2.5}$ SILs, Washington's January 27, 2014 submittal clarified that Ecology was not including those vacated provisions for approval into the SIP, nor will Ecology apply either the $PM_{2.5}$ SMC provisions at 40 CFR 52.21(i)(5)(i)(c) or the $PM_{2.5}$ SIL provisions at 40 CFR 52.21(k)(2) in implementation of its PSD program. In addition, the submittal states that Ecology intends to remove the vacated provisions to ensure consistency with Federal law as soon as practicable. Therefore, the EPA proposes to determine that Ecology's January 27, 2014 SIP submittal is consistent with CAA requirements with respect to $PM_{2.5}$ SILs and SMC.

*B. Utility Air Regulatory Group v. EPA*

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to greenhouse gas (GHG) emissions. See *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or major modification thereof) required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of BACT. In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply the EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, the EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v) and the analogous definition in 40 CFR 52.21(b)(49)(v) for the Federal PSD program). The EPA anticipates a need to revise Federal PSD rules in light of the Supreme Court's decision. In addition, the EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to EPA regulations and state PSD program approvals are expected to be informed by additional legal process in Federal court.

On September 5, 2014, Ecology submitted a letter withdrawing from its January 27, 2014 submittal the portion of WAC 173–400–720(4)(a)(vi) that incorporates 40 CFR 52.21(b)(49)(v) by reference. Ecology notes in its letter that it was not including this provision for

approval into the SIP to align with the Supreme Court decision and to prevent delay in the EPA's proposed action on Ecology's SIP submittal.

Ecology's letter does not discuss the fact that, because it adopted EPA's PSD regulations as of August 13, 2012, its rules include the elements of the EPA's 2012 rule implementing Step 3 of the phase-in of PSD permitting requirements for greenhouse gases described in the Tailoring Rule, which became effective on August 13, 2012 (77 FR 41051, July 12, 2012). The incorporation of the Step 3 rule provisions into Washington's SIP will allow GHG-emitting sources to obtain plantwide applicability limits (PALs) for their GHG emissions on a carbon dioxide equivalent ($CO_2e$) basis. The Federal GHG PAL provisions, as currently written, include some provisions that may no longer be appropriate in light of the Supreme Court decision. Because the Supreme Court has determined that sources and modifications may not be defined as ''major'' solely on the basis of the level of greenhouse gases emitted or increased, PALs for greenhouse gases may no longer have value in some situations where a source might have triggered PSD based on greenhouse gas emissions alone. However, PALs for GHGs may still have a role in determining whether a modification that triggers PSD for a pollutant other than greenhouse gases should also be subject to BACT for greenhouse gases. These provisions, like the other GHG provisions discussed previously, will likely be revised pending further legal action. However, these provisions do not add new requirements for sources or modifications that only emit or increase greenhouse gases above the major source threshold or the 75,000 tons per year (tpy) greenhouse gas level in 40 CFR 52.21(b)(49)(iv). Rather, the PALs provisions provide increased flexibility to sources that choose to address their GHG emissions in a PAL. Because this flexibility may still be valuable to sources in at least one context described above, we believe that it is appropriate to approve these provisions into the Washington SIP at this point in time. The EPA is therefore proposing to determine that Ecology's SIP revision meets the necessary PSD requirements at this time, consistent with the Supreme Court's decision.

## IV. The EPA's Proposed Action

Consistent with the discussion above, the EPA proposes to approve the PSD and visibility permitting regulations submitted by Ecology on January 27, 2014. This action is the third and final in a series acting on all remaining elements contained in Ecology's January 27, 2014 submittal. The previous two actions consisted of the EPA's October 3, 2014 (79 FR 59653) final approval of general provisions that apply to all air pollution sources and the EPA's November 7, 2014 (79 FR 66291) final approval of requirements that implement major source NNSR.

### *A. Rules To Approve Into the SIP*

The EPA proposes to approve into Washington's SIP at 40 CFR part 52, subpart WW, the Ecology regulations listed in the table below. The EPA also proposes to determine that the general air quality regulations contained WAC 173–400–110, WAC 173–400–111, WAC 173–400–112, WAC 173–400–113, and WAC 173–400–171 also meet the EPA's requirements for PSD and visibility permitting and are approved for such purposes.[2]

WASHINGTON STATE DEPARTMENT OF ECOLOGY REGULATIONS FOR PROPOSED APPROVAL

| State citation | Title/subject | State effective date | Explanation |
|---|---|---|---|
| **Chapter 173–400 WAC, General Regulations for Air Pollution Sources** | | | |
| 173–400–700 | Review of Major Stationary Sources of Air Pollution. | 4/1/11 | |
| 173–400–710 | Definitions | 12/29/12 | |
| 173–400–720 | Prevention of Significant Deterioration (PSD) | 12/29/12 | Except: 173–400–720(4)(a)(i-iv); 173–400–720(4)(b)(iii)(C); and 173–400–720(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(49)(v), 52.21(i)(5)(i), and 52.21(k)(2). |
| 173–400–730 | Prevention of Significant Deterioration Application Processing Procedures. | 12/29/12 | |
| 173–400–740 | PSD Permitting Public Involvement Requirements. | 12/29/12 | |
| 173–400–750 | Revisions to PSD Permits | 12/29/12 | Except: 173–400–750(2) second sentence. |
| 173–400–116 | Increment Protection | 9/10/11 | |
| 173–400–117 | Special Protection Requirements for Federal Class I Areas. | 12/29/12 | |

### *B. Transfer of Existing EPA-Issued PSD Permits*

In a letter dated October 24, 2014, Ecology requested approval to exercise its authority to fully administer the PSD program with respect to those sources under Ecology's permitting jurisdiction that have existing PSD permits issued by the EPA since August 7, 1977. This would include authority to conduct general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits (*e.g.,* modifications, amendments, or revisions of any nature), and authority to enforce such permits. Since October 1, 1983, Ecology has had full or partial delegation of the PSD permitting program under the FIP. Therefore, most of the EPA permits subject to proposed transfer were also issued under state authority. For those permits issued solely by the EPA prior to delegation (August 7, 1977 to October 1, 1983), Ecology has also demonstrated adequate authority to enforce and modify these permits. Concurrent with our approval of Ecology's PSD program into the SIP, we are proposing that the EPA-issued

[2] As discussed above, this proposed approval of these regulations for PSD purposes is subject to the exceptions and explanations described in the EPA's July 10, 2014 proposal (79 FR 39351) and October 3, 2014 final action (79 FR 59653) of these regulations.

permits would be transferred to Ecology. The EPA will retain authority to administer any PSD permits issued by the EPA in Washington prior to August 7, 1977.

*C. Scope of Proposed Action*

1. WAC 173–400–700 Through 173–400–750

Under WAC 173–400–700, Ecology's PSD regulations contained in WAC 173–400–700 through 173–400–750 apply statewide except where a local clean air agency has received delegation of the Federal PSD program from the EPA or has a SIP-approved PSD program. At this time, no local clean air agencies have a delegated or SIP-approved PSD program. The EPA is therefore approving Ecology's regulations contained in WAC 173–400–700 through 173–400–750 to apply statewide, except for the three situations described below. For these facilities, emission categories, and geographic areas, the PSD FIP at 40 CFR 52.21 will continue to apply and the EPA will retain responsibility for issuing permits affecting such sources.

a. Sources Under EFSEC's Jurisdiction

By statute, Ecology does not have authority for sources under the jurisdiction of EFSEC. See Chapter 80.50 RCW. Therefore, the EPA's proposed approval of Ecology's PSD program, under WAC 173–400–700 through 173–400–750, excludes projects under the jurisdiction of EFSEC. Such sources will continue to be subject to the PSD FIP in 40 CFR 52.21 until such time that EFSEC's PSD rules are approved into the SIP.

b. Carbon Dioxide Emissions From Industrial Combustion of Biomass

Under a provision contained in RCW 70.235.020, *Greenhouse Gas Emissions Reductions—Reporting Requirements,* Ecology is statutorily barred from regulating certain greenhouse gas emissions under PSD. Specifically, RCW 70.235.020(3) states, ''[e]xcept for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased.'' Under the restrictions of this state statute, if the source of carbon dioxide ($CO_2$) emissions is subject to PSD because it is major for another regulated NSR pollutant, Ecology is prohibited from issuing a PSD permit regulating $CO_2$ emissions. Therefore, if the EPA takes final action on this proposal to approve Ecology's PSD regulations into the SIP, Ecology will be responsible for issuing PSD permits under the SIP for all pollutants except $CO_2$ at such sources and the EPA will retain its role as the primary authority for issuing PSD permits for $CO_2$ emissions from such sources under 40 CFR 52.21. PSD permitting of $CO_2$ emissions from such sources is also excluded from the 2013 Delegation Agreement.

c. Sources in Indian Country

The EPA is also excluding from the scope of this proposed approval of Ecology's PSD program all Indian reservations in the State, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area), and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. 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 and the EPA is therefore proposing to approve Ecology's PSD regulations into the SIP with respect to such lands.

d. Scope of PSD FIP in Washington

Consistent with the limitations on the scope of the EPA's proposed approval of WAC 173–400–700 through 173–400–750 in the Washington SIP, the EPA is proposing to retain, but significantly narrow, the scope of the current PSD FIP in 40 CFR 52.2497. The EPA's Federal PSD permitting rules will continue to apply to facilities subject to the jurisdiction of the Energy Facilities Site Evaluation Council; carbon dioxide emissions from facilities with industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products and wood residuals; and facilities located within Indian reservations in Washington (except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation) and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In addition, the EPA's PSD rules will continue to apply to sources subject to PSD permits issued by the EPA prior to August 7, 1977, but only with respect to the general administration of any such permits still in effect (*e.g.,* modifications, amendments, or revisions of any nature).

2. WAC 173–400–116 and 173–400–117

With respect to the EPA's proposed approval of WAC 173–400–116 and WAC 173–400–117, the SIP-approved provisions of WAC 173–400–020 govern jurisdictional applicability for those sections. WAC 173–400–020 states, ''[t]he provisions of this chapter shall apply statewide, except for specific subsections where a local authority has adopted and implemented corresponding local rules that apply only to sources subject to local jurisdiction as provided under RCW 70.94.141 and 70.94.331.'' Because Ecology will be the only authority in Washington with a SIP-approved PSD program that would implement WAC 173–400–116, *Increment Protection,* the EPA's proposed approval will apply statewide. Similarly, the scope of the EPA's proposed approval of WAC 173–400–117, *Special Protection Requirements for Federal Class I Areas,* applies statewide for PSD permits issued by Ecology under WAC 173–400–700 through 173–400–750. However, for visibility-related elements associated with permits issued under the major NNSR program, the applicability of WAC 173–400–117 is more complicated because local clean air agencies have the authority under state law to have alternative, but no less stringent, permitting requirements. Therefore, consistent with the EPA's November 7, 2014 approval of Ecology's major NNSR program, the EPA's proposed approval of WAC 173–400–117, as it relates to permits issues under WAC 173–400–800 through 173–400–860, is limited to only those counties or sources where the Department of Ecology has direct jurisdiction. The counties where Ecology has direct jurisdiction are: Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman Counties. The EPA also notes that under the SIP-approved provisions of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012, Ecology has statewide, direct jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. The EPA is therefore also approving WAC 173–400–117 in all areas of the state under Ecology's jurisdiction for those source categories.

a. Scope of Visibility FIP in Washington

Consistent with the limitations on the scope of the EPA's approval of Ecology's major NNSR program, the EPA is proposing to retain, but significantly narrow, the scope of the current

visibility FIP in 40 CFR 52.2498. The EPA's Federal visibility new source review rules will continue to apply to facilities subject to the jurisdiction of the Energy Facilities Site Evaluation Council; sources subject to the jurisdiction of local air authorities; and facilities located within Indian reservations in Washington (except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation) and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

*D. The EPA's Oversight Role*

In approving state new source review rules into SIPs, the EPA has a responsibility to ensure that all states properly implement their SIP-approved preconstruction permitting programs. The EPA's approval of Ecology's PSD rules does not divest the EPA of the responsibility to continue appropriate oversight to ensure that permits issued by Ecology are consistent with the requirements of the CAA, Federal regulations, and the SIP. The EPA's authority to oversee permit program implementation is set forth in sections 113, 167, and 505(b) of the CAA. For example, section 167 provides that the EPA shall issue administrative orders, initiate civil actions, or take whatever other action may be necessary to prevent the construction or modification of a major stationary source that does not ''conform to the requirements of'' the PSD program. Similarly, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever the EPA finds that a state ''is not acting in compliance with'' any requirement or prohibition of the CAA regarding the construction of new sources or modification of existing sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever the EPA finds that a person is in violation of an applicable implementation plan.

In making judgments as to what constitutes compliance with the CAA and regulations issued thereunder, the EPA looks to (among other sources) its prior interpretations regarding those statutory and regulatory requirements and policies for implementing them. It follows that state actions implementing the Federal CAA that do not conform to the CAA may lead to potential oversight action by the EPA.

**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 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 CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 the 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. As discussed above, the SIP is not approved to apply in Indian country located in the state, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area), or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated February 25, 2014. The EPA did not receive a request for consultation.

**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.

Dated: December 18, 2014.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2014–30716 Filed 1–6–15; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 721

**[EPA–HQ–OPPT–2014–0760; FRL–9919–23]**

**RIN 2070–AB27**

## Proposed Significant New Use Rule on Certain Chemical Substances

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 13 chemical substances which were the subject of premanufacture notices (PMNs). This action would require persons who intend to manufacture (including import) or process any of the chemical substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit the activity before it occurs.

**DATES:** Comments must be received on or before March 9, 2015.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0760, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.