

**Appendix B to Subpart G of Part 42—  
[Reserved]****Appendix C to Subpart G of Part 42—  
Department Regulations Under Title VI  
of the Civil Rights Act of 1964 (28 CFR  
42.106–42.110) Which Apply to This  
Subpart**

**Editorial Note:** For the text of appendix C, see §§ 42.106 through 42.110 of this part.

**Appendix D to Subpart G of Part 42—  
OJARS' Regulations Under the  
Omnibus Crime Control and Safe  
Streets Act, as Amended, Which Apply  
to This Subpart (28 CFR 42.205 and  
42.206)**

**Editorial Note:** For the text of appendix D, see §§ 42.205 and 42.206 of this part.

Dated: January 11, 2017.

**Loretta E. Lynch,**  
*Attorney General.*

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**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 52**

[EPA–R10–OAR–2016–0784; FRL–9958–41–  
Region 10]

**Air Plan Approval; Washington:  
General Regulations for Air Pollution  
Sources, Southwest Clean Air Agency  
Jurisdiction**

**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 Washington Department of Ecology (Ecology) in coordination with Southwest Clean Air Agency (SWCAA) on December 20, 2016. In the fall of 2014 and spring of 2015, the EPA approved numerous revisions to Ecology's general air quality regulations. However, our approval of the updated Ecology regulations applied only to geographic areas where Ecology, and not a local air agency, has jurisdiction, and statewide to source categories over which Ecology has sole jurisdiction. Under the Washington Clean Air Act, local clean air agencies may adopt equally stringent or more stringent requirements in lieu of Ecology's general air quality regulations, if they so choose. Therefore, the EPA stated that we would evaluate the general air quality regulations as they

apply to local jurisdictions in separate, future actions. If finalized, this proposed action would approve the submitted SWCAA general air quality regulations to replace or supplement the corresponding Ecology regulations for sources in SWCAA's jurisdiction, including implementation of the minor new source review and nonattainment new source review permitting programs. This action would also approve a limited subset of Ecology regulations, for which there are no corresponding SWCAA corollaries, to apply in SWCAA's jurisdiction.

**DATES:** Written comments must be received on or before February 21, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2016–0784 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt 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.

**Table of Contents**

- I. Background for Proposed Action
- II. Washington SIP Revisions
  - A. SWCAA 400–010 Policy and Purpose
  - B. SWCAA 400–020 Applicability
  - C. SWCAA 400–030 Definitions
  - D. SWCAA 400–036 Portable Sources From Other Washington Jurisdictions
  - E. SWCAA 400–040 General Standards for Maximum Emissions
  - F. SWCAA 400–050 Emission Standards for Combustion and Incineration Units

- G. SWCAA 400–052 Stack Sampling of Major Combustion Sources
- H. SWCAA 400–060 Emission Standards for General Process Units
- I. SWCAA 400–070 General Requirements for Certain Source Categories
- J. SWCAA 400–072 Small Unit Notification for Selected Source Categories
- K. SWCAA 400–074 Gasoline Transport Tanker Registration
- L. SWCAA 400–081 Startup and Shutdown
- M. SWCAA 400–091 Voluntary Limits on Emissions
- N. SWCAA 400–100 Registration Requirements and SWCAA 400–101 Emission Units Exempt From Registration Requirements
- O. SWCAA 400–105 Records, Monitoring and Reporting
- P. SWCAA 400–106 Emission Testing and Monitoring at Air Contaminant Sources
- Q. SWCAA 400–109 Air Discharge Permit Applications
- R. SWCAA 400–110 Application Review Process for Stationary Sources (New Source Review); SWCAA 400–111 Requirements for New Sources in a Maintenance Plan Area; SWCAA 400–112 Requirements for New Sources in Nonattainment Areas; and SWCAA 400–113 Requirements for New Sources in Attainment or Nonclassifiable Areas
- S. SWCAA 400–114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source
- T. SWCAA 400–116 Maintenance of Equipment
- U. SWCAA 400–130 Use of Emission Reduction Credits; SWCAA 400–131 Deposit of Emission Reduction Credits Into Bank; and SWCAA 400–136 Maintenance of Emission Reduction Credits in Bank
- V. SWCAA 400–151 Retrofit Requirements for Visibility Protection and SWCAA 400–161 Compliance Schedules
- W. SWCAA 400–171 Public Involvement
- X. SWCAA 400–190 Requirements for Nonattainment Areas; SWCAA 400–200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques; SWCAA 400–205 Adjustment for Atmospheric Conditions; and SWCAA 400–210 Emission Requirements of Prior Jurisdictions
- Y. SWCAA 400–220 Requirements for Board Members; SWCAA 400–230 Regulatory Actions and Civil Penalties; SWCAA 400–240 Criminal Penalties; SWCAA 400–250 Appeals; SWCAA 400–260 Conflict of Interest; SWCAA 400–270 Confidentiality of Records and Information; and SWCAA 400–280 Powers of Agency
- Z. SWCAA 400–800 Major Stationary Source and Major Modification in a Nonattainment Area; SWCAA 400–810 Major Stationary Source and Major Modification Definitions; SWCAA 400–820 Determining if a New Stationary

- Source or Modification to a Stationary Source is Subject to These Requirements; SWCAA 400–830 Permitting Requirements; SWCAA 400–840 Emission Offset Requirements; SWCAA 400–850 Actual Emissions—Plantwide Applicability Limitation (PAL); SWCAA 400–860 Public Involvement Procedures
- AA. WAC 173–400–117 Special Protection Requirements for Federal Class I Areas; WAC 173–400–118 Designation of Class I, II, and III Areas; and WAC 173–400–560 General Order of Approval
- BB. Appendix A—SWCAA Method 9, Visual Opacity Determination Method
- III. The EPA’s Proposed Action
- A. Regulations To Approve and Incorporate by Reference Into the SIP
- B. Regulations To Approve but Not Incorporate by Reference
- C. Regulations To Remove From the SIP
- D. Scope of Proposed Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

## 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), which the EPA approved in three phases on October 3, 2014 (79 FR 59653), November 7, 2014 (79 FR 66291), and April 29, 2015 (80 FR 23721). Because the Washington Clean Air Act allows local clean air agencies to adopt equally stringent or more stringent standards than the State regulations contained in Chapter 173–400 WAC, the EPA’s approval of Ecology’s January 2014 submittal applied only to geographic areas and source categories under Ecology’s direct jurisdiction. We stated that we would address the applicability of Chapter 173–400 WAC in local clean air agency jurisdictions on a case-by-case basis in separate, future actions.

## II. Washington SIP Revisions

On December 20, 2016, the Director of Ecology, as the Governor’s designee for SIP revisions, submitted a request to update the general air quality regulations as they apply to the jurisdiction of SWCAA. SWCAA’s jurisdiction consists of Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, excluding facilities subject to Energy Facility Site Evaluation Council (EFSEC) jurisdiction, Indian reservations and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and facilities subject to the applicability sections of 173–405–012, 173–410–012, and 173–415–012, as discussed in Section III.C. *Scope of Proposed Action.* Appendices A and B

of the SIP revision, included in the docket for this action, show the SWCAA 400 *General Regulations for Air Pollution Sources* submitted for approval to apply in lieu of Chapter 173–400 WAC for sources within SWCAA’s jurisdiction. The regulations contained in SWCAA 400 generally mirror the Ecology corollaries contained in WAC 173–400, with minor adaptations to address local priorities and local air pollution concerns. A summary of the provisions is provided below.

### A. SWCAA 400–010 Policy and Purpose

Aside from the name change “Southwest Air Pollution Control Authority” to “Southwest Clean Air Agency” this section remains unmodified since the EPA’s last approval (62 FR 8624, February 26, 1997). The EPA reviewed SWCAA 400–010 and is proposing to approve this provision to apply in lieu of WAC 173–400–010 within SWCAA’s jurisdiction.

### B. SWCAA 400–020 Applicability

The EPA’s October 3, 2014 approval of the Ecology regulations included a revised version of WAC 173–400–020 which clarified that local clean air agencies have the option to implement equally stringent or more stringent corollaries to apply in lieu of Chapter 173–400 WAC, or parts of Chapter 173–400 WAC, for sources within its jurisdiction. SWCAA added 400–020(2) to reflect this revision of WAC 173–400–020. Specifically, SWCAA 400–020(2) states, “The Agency implements and enforces the Washington Administrative Code as adopted by Ecology in Title 173 under Chapter 70.94 RCW, except where the Agency has adopted corresponding provisions. Agency adopted provisions apply in lieu of the corresponding WAC provisions.” SWCAA 400–020(2) also clarifies that SWCAA has chosen not to adopt WAC 173–400–930, which provides an optional, alternative means of satisfying new source review permitting requirements for emergency engines in jurisdictions that choose to adopt this provision. As discussed later in this preamble, SWCAA 400–072 *Small Unit Notification for Selected Source Categories* does contain alternative means of satisfying new source review requirements for some emergency service internal combustion engines. However, SWCAA 400–072 covers only a subset of the equipment addressed by WAC 173–400–930, and is not intended by SWCAA to be a corollary to apply in lieu of WAC 173–400–930. All other applicability provisions of SWCAA 400–020 remain

unchanged since the EPA’s last approval on February 26, 1997. The EPA reviewed SWCAA 400–020 and is proposing to approve this provision to apply in lieu of WAC 173–400–020 within SWCAA’s jurisdiction.

### C. SWCAA 400–030 Definitions

The majority of definitions contained in SWCAA 400–030 are adapted or copied verbatim from the definitions contained in WAC 173–400–030, as approved by the EPA in October 3, 2014. A notable exception is SWCAA 400–030(4) “Air contaminant” or “air pollutant.” In SWCAA 400–030(4), the agency clarifies that for the purposes of regulation under the Washington SIP, air contaminant means only, “(a) Those air contaminants for which the EPA has established National Ambient Air Quality Standards (NAAQS) and precursors to such NAAQS pollutants as determined by EPA for the applicable geographic area; and (b) Any additional air contaminants that are required to be regulated under Part C of Title I of the Federal Clean Air Act (CAA), but only for the purpose of meeting the requirements of Part C or to the extent those additional air contaminants are regulated in order to avoid such requirements.” This clarification is consistent with the EPA’s interpretation of section 110 of the CAA, and the EPA’s response to comments in our approval of the Chapter 173–400 WAC general provisions (79 FR 59653, October 3, 2014, at page 59654). Similarly, SWCAA is not submitting and the EPA is not proposing to approve SWCAA 400–030(21) “Climate Change” and SWCAA 400–030(129) “Toxic Air Pollutant” because they are not related to the criteria pollutants regulated under title I of the CAA, not essential for meeting and maintaining the NAAQS, or not related to the requirements for SIPs under section 110 of the CAA. The remainder of the SWCAA definitions, not otherwise adapted from the WAC, generally copy or cite to Federal definitions or internal SWCAA definitions previously approved in other sections. With the exception of SWCAA 400–030(21) and (129), we are proposing to approve SWCAA 400–030 to apply in lieu of WAC 173–400–030 within SWCAA’s jurisdiction.

### D. SWCAA 400–036 Portable Sources From Other Washington Jurisdictions

The EPA’s October 3, 2014 approval included Ecology’s regulations in WAC 173–400–036. WAC 173–400–036 allows portable sources to relocate and operate in any other clean air agency jurisdiction within the State, without obtaining a site-specific or permitting

agency-specific order of approval, if the permitting authority in the destination jurisdiction has adopted this provision. Under WAC 173-400-036, before a source can move it must: Already have an approved notice of construction order identifying the emission units as a portable source; submit a relocation notice and a copy of the applicable portable source order of approval to the permitting agency with jurisdiction over the intended operation location a minimum of fifteen calendar days before the portable source begins operation at the new location; submit the emissions inventory required under WAC 173-400-105 to each permitting agency in whose jurisdiction the portable source operated during the preceding year; and limit operations to one year or less. A source moving into a nonattainment area that emits a pollutant or precursor for which the area is classified as nonattainment must obtain a site-specific order of approval and may not rely on this provision. Major stationary sources must comply with all otherwise applicable Prevention of Significant Deterioration (PSD) requirements. SWCAA 400-036 generally follows the language of WAC 173-400-036 with minor revisions to reflect the SWCAA-specific permitting and emissions inventory regulations. The EPA also notes that portable sources that move within SWCAA's jurisdiction are regulated under the new source review requirements of SWCAA 400-110(6), which is a minor difference from the process used under the WAC. We believe these minor differences do not affect approvability. The EPA reviewed SWCAA 400-036 and we are proposing to approve this provision to apply in lieu of WAC 173-400-036 within SWCAA's jurisdiction.

#### *E. SWCAA 400-040 General Standards for Maximum Emissions*

SWCAA 400-040 generally follows the language of WAC 173-400-040, with minor changes to reflect SWCAA's regulatory structure or to improve clarity. SWCAA submitted revisions to the introductory paragraph of 400-040 and sections (1)(b), (1)(e), (3), (5), (6), (7), and (8) for approval into the SIP. Other regulatory provisions contained in SWCAA 400-040 were not submitted and SWCAA is not requesting revision of these provisions in the SIP at this time.

The revised regulations in sections (1)(b), (1)(e), (3), (5), (6), (7), and (8) set out general requirements for reasonably available control technology (RACT), visible emissions, fugitive emissions, sulfur dioxide concentrations, and dust control. These general requirements

apply to all sources and emission units, unless applicable emission unit-specific standards are contained in another section of the regulations. Because the submitted SWCAA 400-040 regulatory text is consistent with our October 2014 approval of the corresponding WAC 173-400-040 provisions, we are proposing to approve the introductory paragraph of SWCAA 400-040 and sections (1)(b), (1)(e), (3), (5), (6), (7), and (8) to apply in lieu of WAC 173-400-040 within SWCAA's jurisdiction.

#### *F. SWCAA 400-050 Emission Standards for Combustion and Incineration Units*

SWCAA 400-050 is similar in format and content to WAC 173-400-050 *Emission Standards for Combustion and Incineration Units*, with changes to reflect SWCAA's regulatory structure or local pollution concerns, or to improve clarity. SWCAA 400-050(1) provides particulate matter emission standards that are nearly identical to WAC 173-400-050(1), which the EPA approved in our October 3, 2014 action. SWCAA 400-050(2) adds a fuel oil sulfur content limit that is not present in WAC 173-400-050. The December 20, 2016 submittal explains that this sulfur content limit became effective January 1, 2013, and is consistent with Best Available Control Technology (BACT) limits that have routinely been incorporated into SWCAA air discharge permits for combustion sources in recent years. SWCAA 400-050(4) provides criteria for modifying the default oxygen correction factor when appropriate, such as where the source is also subject to a New Source Performance Standard (NSPS) and that standard has a different oxygen correction factor. This mirrors the corresponding EPA-approved provision in WAC 173-400-050(3). The EPA is therefore proposing approval of SWCAA 400-050(1), (2), and (4) to apply in lieu of the corresponding provisions of WAC 173-400-050 within SWCAA's jurisdiction.

Consistent with the EPA's October 2014 final action on WAC 173-400-050, SWCAA is not submitting and the EPA is not proposing to approve, certain provisions in SWCAA 400-050 which do not regulate criteria pollutants covered under title I of the CAA, are not essential for meeting and maintaining the NAAQS, and are not required for SIPs under section 110 of the CAA. Specifically, SWCAA requested that the EPA remove SWCAA 400-050(3) from the SIP. This subsection, which regulates total carbonyls from incineration units, corresponds to WAC 173-400-050(2). In the EPA's October

2014 final action we removed WAC 173-400-050(2) from the SIP, stating that total carbonyls are not a criteria air pollutant or an EPA designated precursor to criteria pollutants, and are not appropriate for inclusion in a SIP. Similarly, SWCAA is not submitting, and the EPA is not proposing to approve, SWCAA 400-050(5) and (6), which are emission guidelines for commercial, industrial, and small municipal waste combustion units regulated under section 111 of the CAA which are not related to section 110 of the CAA and not appropriate for approval into the SIP.

#### *G. SWCAA 400-052 Stack Sampling of Major Combustion Sources*

Ecology first submitted SWCAA 400-052 for incorporation into the SIP in 1994. The intent was to establish a regime of emission testing for large combustion sources that predated the establishment of SWCAA and had not undergone new source review. In the December 20, 2016 submittal, SWCAA explains that all major sources that would otherwise be subject to this provision already have periodic testing requirements established via new source review and/or compliance assurance monitoring imposed under the Air Operating Permit (AOP) program. For this reason, SWCAA requested that the EPA remove SWCAA 400-052 from the SIP. The EPA reviewed SWCAA's demonstration that removal of this provision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of section 110 of the CAA and is proposing to remove SWCAA 400-052 from the SIP. The demonstration can be found in the docket for this action.

#### *H. SWCAA 400-060 Emission Standards for General Process Units*

SWCAA 400-060 follows the SIP-approved requirements of WAC 173-400-060, which stipulate that no person shall cause or allow the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter at standard conditions of exhaust gas. SWCAA 400-060 and WAC 173-400-060 use slightly different methods to determine compliance. WAC 173-400-060 cites test methods found in 40 CFR parts 51, 60, 61 and 63 or contained in Ecology's "Source Test Manual—Procedures for Compliance Testing." SWCAA 400-060 cites test methods from 40 CFR parts 51, 60, 61 and 63 and any other appropriate test procedures approved in advance by both SWCAA and the EPA. The EPA has

reviewed this minor difference in rule language regarding test methods and is proposing to approve SWCAA 400–060 to apply in lieu of WAC 173–400–060 in SWCAA’s jurisdiction.

#### *I. SWCAA 400–070 General Requirements for Certain Source Categories*

SWCAA submitted revisions to SWCAA 400–070 sections (1), (2)(b), (3)(a), (4), (8)(a), (8)(b), (13), (15)(a), (15)(b), and (15)(d) for approval into the SIP. Other regulatory provisions contained in SWCAA 400–070 were not submitted and SWCAA is not requesting revision of these provisions in the SIP at this time.

SWCAA 400–070, which sets separate standards applicable to certain source categories, generally follows the language of the SIP-approved provisions of WAC 173–400–070, with some differences. For example, WAC 173–400–070(1) sets requirements for the use of wigwam burners designed to dispose of wood waste; whereas SWCAA 400–070(1) banned the use of wigwam or equivalent type burners effective January 1, 1994. SWCAA 400–070(2)(b) and (3)(a) regulate hog fuel boilers and orchard heaters, respectively, with regulatory text identical to WAC 173–400–070(2)(b) and (3)(a). SWCAA 400–070 contains no provisions that correspond to WAC 173–400–070(4) and (6), which regulate grain elevators and certain wood waste burners, respectively. This has the effect of making SWCAA 400–070 more stringent, subjecting these source categories to all general standards rather than providing source category exemptions from the general standards. SWCAA 400–070(4), which regulates catalytic cracking units, corresponds to WAC 173–400–070(5). In the December 20, 2016 submittal, SWCAA notes that its jurisdiction has no existing catalytic cracking units. Therefore SWCAA 400–070(4) focuses exclusively on the new source review and BACT requirements similar to WAC 173–400–070(5)(b). SWCAA 400–070(8), (13), and (15), which regulate abrasive blasting, natural gas fired water heaters, and outdoor wood-fired boilers, have no corresponding provisions in WAC 173–400–070. Unlike WAC 173–400–070, which provides exemptions from the general requirements of WAC 173–400–040, 173–400–050, and 173–400–060, the source category-specific requirements of SWCAA 400–070 are in addition to any general requirements that apply. This has the effect of making SWCAA 400–070 more stringent than WAC 173–400–070 for these source categories. Lastly, the version of

SWCAA 400–070(6) currently incorporated into the SIP requires “that all gasoline dispensing facilities shall meet all the provisions of SWAPCA 400–110(8) and SWAPCA 491 *Emission Standards and Controls for Sources Emitting Gasoline Vapors*.” Because SWCAA 400–070(6) merely points to other SIP-approved requirements for informational purposes, SWCAA requested that the EPA remove SWCAA 400–070(6) from the SIP.

The EPA is proposing to approve SWCAA 400–070 sections (1), (2)(b), (3)(a), (4), (8)(a), (8)(b), (13), (15)(a), (15)(b), and (15)(d) to apply in lieu of WAC 173–400–070 within SWCAA’s jurisdiction. The EPA is also proposing to grant SWCAA’s request to remove SWCAA 400–070(6) from the SIP because removal of this provision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of section 110 of the CAA. We are also proposing to remove SWCAA 400–070(8)(c) [formerly 400–070(7)(d)] from the SIP because this provision related to toxic air pollutants, regulated outside the scope of the SIP, was inadvertently included in our February 26, 1997 approval of SWCAA 400–070 (62 FR 8624).

#### *J. SWCAA 400–072 Small Unit Notification for Selected Source Categories*

SWCAA 400–072 has no corresponding provision in the WAC; however in many ways it is similar to the EPA-approved WAC 173–400–560 *General Orders of Approval*. In our proposed approval of WAC 173–400–560 we explained that this provision provides an alternative path to meeting minor new source review permit obligations for certain new sources where the permitting authority had considerable experience in issuing approvals, where the BACT emission controls have not been changing or anticipated to change in the near future, and the use of BACT emission controls will protect the NAAQS (79 FR 39351, July 10, 2014, at page 39354) To date, Ecology has issued general orders of approval under WAC 173–400–560 for dairy anaerobic digesters, concrete batch plants, gas-powered emergency electric generators, rock crushers, small water heaters and steam generating boilers, auto body shops, and asphalt plants. SWCAA 400–072 covers some of the same source categories, but takes a different approach. Rather than relying on issuance of general orders of approval, SWCAA 400–072 sets monitoring, emission limit, recordkeeping, testing, and reporting

requirements for certain small scale source categories via regulation. Included in the December 20, 2016 submittal, is a demonstration of how SWCAA 400–072 provides equivalent or better protection than facility-specific minor new source review permits. SWCAA asserts that certain source categories, such as coffee roasters, would likely be exempt under the new source review permitting thresholds of the WAC, making SWCAA 400–072 more stringent in some cases. The EPA reviewed the regulatory requirements of SWCAA 400–072 covering coffee roasters, small gas fired boilers and heaters, emergency service internal combustion engines, petroleum dry cleaners, and rock crushers. We are proposing to determine that SWCAA 400–072 meets the criteria for approval under section 110 of the CAA. We note that SWCAA did not submit, and the EPA is not proposing to approve the specific provisions of SWCAA 400–072(5)(a)(ii)(B), (5)(d)(ii)(B), (5)(d)(iii)(A), (5)(d)(iii)(B) and all reporting requirements related to toxic air pollutants, because they are not related to the criteria pollutants regulated under title I of the CAA, not essential for meeting and maintaining the NAAQS, not related to the requirements for SIPs under section 110 of the CAA, or contain unbounded director discretion provisions not appropriate for the SIP. With the exceptions noted above, we are proposing to approve SWCAA 400–072.

#### *K. SWCAA 400–074 Gasoline Transport Tanker Registration*

SWCAA 400–074, which regulates gasoline transport tankers, has no corresponding provision in Chapter 173–400 WAC. Aside from minor revisions to address the agency name change and readability, SWCAA 400–074 remains unchanged since the EPA’s last approval on February 26, 1997. As part of the December 20, 2016 submittal, SWCAA requested that the EPA remove SWCAA 400–074(2) from the SIP because this agency registration fee provision is not a required element for SIPs under section 110 of the CAA. The EPA is proposing to approve the updated text of SWCAA 400–074, except for SWCAA 400–074(2), which the EPA proposes to remove from the SIP.

#### *L. SWCAA 400–081 Startup and Shutdown*

SWCAA 400–081 generally follows the language of the EPA-approved WAC 173–400–081 *Startup and Shutdown*, with minor revisions for readability and clarity. These provisions require that the

respective agencies consider any physical and operational constraints on the ability of a stationary source or source category to comply with the applicable technology based standard during startup or shutdown. Under SWCAA 400-081(1) and the corresponding provision of WAC 173-400-081(4), no provision of SWCAA 400-081 shall be construed to authorize emissions in excess of SIP-approved emission standards unless previously approved by the EPA as a SIP amendment. We reviewed SWCAA 400-081 and are proposing to approve this provision to apply in lieu of WAC 173-400-081 within SWCAA's jurisdiction.

#### *M. SWCAA 400-091 Voluntary Limits on Emissions*

SWCAA 400-091 generally follows the language of WAC 173-400-091, which the EPA approved in our October 3, 2014 final action. These provisions authorize the respective agencies to issue regulatory orders setting voluntary limits on the potential to emit of a source, allowing the source to avoid applicability of certain major source programs such as PSD. SWCAA 400-091 contains the same substantive requirements of WAC 173-400-091 with minor revisions to reflect the SWCAA regulatory structure and to improve clarity. We reviewed SWCAA 400-091 and are proposing to approve this provision to apply in lieu of WAC 173-400-091 in SWCAA's jurisdiction. We also note that the current SIP includes a reference to SWCAA 400-090 which was renumbered to SWCAA 400-091 on September 21, 1995. We are proposing to correct this typographical error which was inadvertently not addressed as part of our prior February 26, 1997 action.

#### *N. SWCAA 400-100 Registration Requirements and SWCAA 400-101 Emission Units Exempt From Registration Requirements*

In the January 27, 2014 submittal of the general air quality regulations, Ecology explained that WAC 173-400-100 *Registration Program* was no longer a means of determining the applicability of Washington's new source review permitting requirements and did not impose air pollution control requirements on sources or implement Federal standards. As described in the proposal for our October 3, 2014 final action, we removed WAC 173-400-100 from the SIP for sources under Ecology's direct jurisdiction (79 FR 39351, July 10, 2014, at page 79 FR 39354). Similarly, the December 20, 2016 submittal explains that SWCAA revised its registration program under SWCAA

400-100 and 400-101 to disconnect it from new source review permitting program applicability. Removing it from the SIP would therefore be consistent with our removal of WAC 173-400-100 from the SIP. We have reviewed SWCAA 400-100 and 400-101 and are proposing to grant SWCAA's request to remove these provisions from the SIP because removal would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of CAA section 110.

#### *O. SWCAA 400-10 Records, Monitoring and Reporting*

SWCAA 400-105 generally follows WAC 173-400-105, which the EPA approved in October 3, 2014 final action. It contains the emissions inventory, monitoring, reporting, and recordkeeping requirements for sources under SWCAA's jurisdiction. SWCAA 400-105 differs slightly from the WAC in applicability, deadlines for reporting, list of reportable pollutants, and monitoring requirements, but not in a substantive way. For example, SWCAA 400-105 applies to all registered sources and sources subject to operating permits under title V of the CAA; whereas WAC 173-400-105 applies to all sources receiving notification from the Director of Ecology. In practical terms, the scope is the same. Similarly, SWCAA's submittal deadline for emissions inventory information is March 15th, as opposed to the 105th day of the calendar year under the WAC. SWCAA 400-105(1) contains additional reportable pollutants than the WAC, including toxic air pollutants. As previously discussed, SWCAA is not submitting and the EPA is not approving provisions related to toxic air pollutants that are inappropriate for SIP approval under section 110 of the CAA.

With respect to the difference in monitoring requirements, SWCAA 400-105(4)(e) requires compliance with the specifications and reporting requirements of 40 CFR part 60, Appendices B and F, in addition to the specifications and reporting requirements of 40 CFR 51, Appendix P, Sections 3-5 required under WAC 173-400-105(5)(e). SWCAA 400-105(4)(f) explicitly contemplates the use of continuous process parameter monitoring and/or frequent stack testing as potential surrogates to continuous emission monitoring; whereas WAC 173-400-105(5)(f) states that alternative monitoring and reporting procedures "will generally take the form of stack tests" but allows agency discretion in determining other alternatives. In practical terms, the requirements are the

same. We reviewed SWCAA 400-105 and are proposing to approve this provision to apply in lieu of WAC 173-400-105 within SWCAA's jurisdiction, except for the reporting requirements related to toxic air pollutants which are inappropriate for SIP approval under section 110 of the CAA.

#### *P. SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources*

SWCAA 400-106(1)(a), (b), and (c) take the EPA-approved emission testing requirements of WAC 173-400-105(4) and incorporate them in another section with additional requirements not cited in the WAC and not submitted for the EPA's approval. SWCAA 400-106(1)(a), (b), and (c), although different in structure, are nearly identical to WAC 173-400-105(4). The key difference is that SWCAA 400-106(1)(b) allows the use of selected Oregon Department of Environmental Quality test methods, due to the geographic proximity to Oregon; whereas the WAC does not. We reviewed SWCAA 400-106(1)(a), (b), and (c) and are proposing to approve these provisions to apply in lieu of WAC 173-400-105(4) within SWCAA's jurisdiction.

#### *Q. SWCAA 400-109 Air Discharge Permit Applications*

SWCAA 400-109 contains the applicability and permit application procedures for new source review (NSR) that corresponds to the EPA-approved provisions of WAC 173-400-110. The most significant difference is that SWCAA 400-109 contains generally lower, more stringent NSR-applicability exemption thresholds than the corresponding WAC provisions for many of the criteria pollutants. For example, SWCAA 400-109(3)(d) sets exemption emission thresholds for nitrogen oxides, sulfur dioxide, and volatile organic compounds at one ton per year (tpy) compared to two tpy under the SIP-approved provisions of WAC 173-400-110(5). Any stationary source that is not otherwise exempt under SWCAA 400-109(3)(e), discussed below, must undergo preconstruction permitting review if uncontrolled potential emissions are above these threshold levels. Like the WAC, if the stationary source emissions are significant enough to be considered "major" for a given pollutant, SWCAA 400-109 directs the reader to the relevant portions of WAC 173-400-700 through 750 for the PSD program administered by Ecology, and SWCAA 400-800 through 860 for major source nonattainment NSR administered by SWCAA. All other stationary sources, or

certain pollutants at a stationary source, which fall between the minor NSR exemption emission thresholds and the thresholds for “major” stationary sources are subject to the minor NSR permitting program administered by SWCAA.

SWCAA 400–109(3)(e) also contains equipment and activity exemptions comparable to the EPA-approved provisions of WAC 173–400–110(4), with some differences in source categories to reflect local pollution concerns. The majority of equipment and activity exemptions contained in SWCAA 400–109(3)(e) remain the same since the EPA’s last approval in 1997. As part of the December 20, 2016 submittal, SWCAA provided a demonstration to show that the new exemptions added since the EPA’s last approval are unlikely to cause or contribute to an exceedance of the NAAQS. These new exemptions cover certain wastewater treatment plants, water heaters, and emergency internal combustion engines. SWCAA’s demonstration describes how these source categories are covered by other local or Federal standards, such as the Federal engine standards contained in 40 CFR 63, subpart ZZZZ, or have been found by SWCAA to have emissions below the thresholds contained in SWCAA 400–109(3)(d).

The EPA reviewed SWCAA 400–109 and is proposing to determine that it meets the criteria for approvability under CAA section 110. The EPA also notes that SWCAA did not submit, and the EPA does not propose to approve, the toxic air pollutant provisions contained in SWCAA 400–109(3)(d) and (3)(e)(ii) because they are outside the scope of this proposed action under section 110 of the CAA. Lastly, under section 110(a)(2)(L) of the CAA, the State, or local agencies acting in lieu of the State, must demonstrate the ability to collect adequate fees for permitting major sources. SWCAA is therefore submitting SWCAA 400–109(4) to demonstrate adequate fee authority to implement the major source nonattainment NSR program under SWCAA 400–800 through 860. While the EPA reviews these submissions to confirm adequate authority, the EPA generally does not include local or State agency fees as part of the Washington SIP incorporated by reference in 40 CFR 52.2470(c). The EPA is also proposing to correct an error from our previous approval in 1997 when the fee provisions of SWCAA 400–109(4) were inadvertently incorporated by reference. With the exceptions noted above, we are proposing to approve SWCAA 400–109

to apply in lieu of WAC 173–400–110 within SWCAA’s jurisdiction.

*R. SWCAA 400–110 Application Review Process for Stationary Sources (New Source Review); SWCAA 400–111 Requirements for New Sources in a Maintenance Plan Area; SWCAA 400–112 Requirements for New Sources in Nonattainment Areas; and SWCAA 400–113 Requirements for New Sources in Attainment or Nonclassifiable Areas*

As part of the December 20, 2016 submittal, SWCAA explains that an effort was made to align the SWCAA NSR program to be as consistent as possible with the EPA-approved Ecology regulations contained in the WAC. Differences are generally insubstantial, with slightly different numbering systems, procedures, and edits for readability. One key difference is that the SWCAA NSR program contains more stringent NSR provisions for “designated maintenance plan areas” to ensure continued compliance with the NAAQS under SWCAA 400–111. In these areas, if a violation of an ozone ambient air quality standard or a second violation of the carbon monoxide ambient air quality standard has occurred, SWCAA may require the application of lowest achievable emission rate (LAER) for the maintenance pollutant(s) and any pollutant for which the proposed new source or modification is major.

Other less substantive differences between the SWCAA NSR program and the Ecology program under the WAC are discussed below. SWCAA 400–110 *Application Review Process for Stationary Sources (New Source Review)* requires compliance with the State Environmental Policy Act as part of the completeness and final determination criteria. This requirement is not explicitly stated in the corresponding provisions of WAC 173–400–111 but nonetheless still applies, making the two program equivalent in effect. The SWCAA regulations also differ slightly from the WAC with respect to portable sources. SWCAA 400–110(6) applies to the relocation of portable sources permitted by SWCAA; whereas SWCAA 400–036 applies to relocation of portable sources permitted by other jurisdictions. The WAC does not make this distinction and regulates all portable sources under WAC 173–400–036. This minor distinction does not result in a substantive difference between the two respective NSR programs. WAC 173–400–111 also does not address reopening of approval orders for cause, so there is no corresponding section to SWCAA 400–

110(10). Lastly, for the convenience of the reader, SWCAA 400–112 *Requirements for New Sources in Nonattainment Areas* and SWCAA 400–113 *Requirements for New Sources in Attainment or Nonclassifiable Areas* contain pointers to the toxic air pollutant and visibility regulations that are not explicitly contained in the corresponding WAC provisions. As previously noted, SWCAA did not submit and the EPA is not proposing to approve the provisions related to toxic air pollutants in SWCAA 400–110(1)(d), 400–111(7), 400–112(6), and 400–113(5), because the regulation of toxic air pollutants is outside the scope of this action under section 110 of the CAA. With the exceptions noted above, we are proposing to approve SWCAA 400–110 through 113, including SWCAA’s additional requirements for designated maintenance areas, to apply in lieu of WAC 173–400–111 through 113 within SWCAA’s jurisdiction.

*S. SWCAA 400–114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source*

SWCAA 400–114 is derived from the statutory provisions of the Washington Clean Air Act, in particular Revised Code of Washington (RCW) 70.94.153. Under SWCAA 400–114, any replacement or substantial alteration of emission control technology installed on an existing stationary source or emission unit, excluding routine maintenance, repair or parts replacement, shall require submission of an air discharge permit application for determining NSR applicability under SWCAA 400–110. If the stationary source or emission unit is subject to NSR, all requirements under SWCAA 400–111, 400–112, and/or 400–113 shall apply. If the replacement or substantial alteration is not subject to NSR, then reasonably available control technology (RACT) or other requirements shall apply as dictated by RCW 70.94. Aside from minor wording changes for clarity, SWCAA 400–114 remains substantially unchanged since the EPA’s last approval of this provision in 1997. We reviewed SWCAA 400–114 and are proposing to determine that it meets the criteria for approvability under CAA section 110. The corresponding Ecology provision of WAC 173–400–114 is currently not in the SIP. However, the EPA is also proposing to approve SWCAA 400–114 to apply in lieu of WAC 173–400–114 should this WAC provision be approved into the SIP at some future time.

*T. SWCAA 400–116 Maintenance of Equipment*

SWCAA 400–116 has no corresponding provision under the WAC. This regulation requires that all process and pollution control equipment be maintained and operated in good working order. SWCAA 400–116(3) gives the agency authority to require that an Operations and Maintenance (O&M) plan be developed and implemented for each emission unit or piece of control or capture equipment in order to assure continuous compliance with approval conditions. SWCAA 400–116 remains substantially unchanged since the EPA's last approval in 1997, aside from minor wording changes for readability. We reviewed the updated version of SWCAA 400–116 and we propose to approve the changes.

*U. SWCAA 400–130 Use of Emission Reduction Credits; SWCAA 400–131 Deposit of Emission Reduction Credits Into Bank; and SWCAA 400–136 Maintenance of Emission Reduction Credits in Bank*

SWCAA 400–130, 400–131, and 400–136 correspond to the Ecology provisions of WAC 173–400–131 and WAC 173–400–136, which the EPA approved on November 7, 2014 (79 FR 59653). These provisions implement a program to issue emission reduction credits (ERCs) useable for offsets required by the major nonattainment NSR permitting program and the attainment area offset provisions for sources under SWCAA 400–113(3) and its corollary, WAC 173–400–113(4). ERCs under this program may also be used as creditable emission reductions for netting purposes in the major nonattainment NSR and PSD permitting programs provided they meet the requirements set forth in the definitions of “major modification” in those programs. SWCAA's ERC program contains all of the functional requirements of the WAC, but does not contain provisions for discounting issued ERCs as provided in WAC 173–400–136(6). An approvable ERC program need not include provisions which spell out how banked ERC's would be discounted, but it cannot include provisions which would prevent the air authority from reducing or cancelling ERC's when necessary to attain and maintain the NAAQS. SWCAA's rules do not include any provisions which would prevent it from doing such as part of the development of an attainment or maintenance plan. SWCAA's ERC program also contains provisions for the establishment and maintenance of an ERC bank to

document and track outstanding ERCs, which does not exist in the WAC.

We reviewed SWCAA's ERC program and are proposing to determine that it meets the criteria for approvability under section 110 of the CAA. We are also proposing to approve SWCAA 400–130, 400–131, and 400–136 to apply in lieu of WAC 173–400–131 and 173–400–136 within SWCAA's jurisdiction.

*V. SWCAA 400–151 Retrofit Requirements for Visibility Protection and SWCAA 400–161 Compliance Schedules*

Aside from minor wording changes for clarity, SWCAA 400–151 and 400–161 remain substantially unchanged since the EPA's last approval of these provisions on February 26, 1997. Both provisions include the substantive requirements of the corresponding Ecology regulations contained in WAC 173–400–151 and 173–400–161. The most significant change is the modification of SWCAA 400–151 and 400–030 to more clearly define the term “existing stationary facility” to be consistent with the definition contained in 40 CFR 51.301, under the EPA's visibility protection program requirements. We reviewed SWCAA 400–151 and 400–161 and are proposing to approve these provision to apply in lieu of WAC 173–400–151 and 173–400–161 within SWCAA's jurisdiction.

*W. SWCAA 400–171 Public Involvement*

SWCAA 400–171 closely follows WAC 173–400–171 *Public Notice and Opportunity for Public Comment*, which the EPA approved on April 29, 2015 (80 FR 23721). The most significant change to SWCAA 400–171 since the EPA's last approval in 1997 regards the EPA's interpretation of “prominent advertisement.” Specifically, 40 CFR 51.161(b) establishes that the opportunity for public comment with respect to NSR permitting shall include, among other requirements, a notice by “prominent advertisement” in the affected area. Historically this information was shared using a public notice in a newspaper. However in an April 17, 2012 guidance for minor NSR programs, included in the docket for this action, the EPA acknowledged the public's increased use of web based sources of information and clarified that the “prominent advertisement” requirement at 40 CFR 51.161(b)(3) is media neutral.<sup>1</sup> As a result, SWCAA

modified the language of SWCAA 400–171 to mirror the EPA and Ecology's use of the term “prominent advertisement.” All other changes to SWCAA 400–171 were insignificant changes, such as updating reference dates or minor revisions to improve clarity for the reader. Lastly, SWCAA did not submit and the EPA is not proposing to approve SWCAA 400–171(2)(a)(xii) regarding public participation procedures for toxic air pollutants, because it is outside the scope of our approval under section 110 of the CAA. With the exception noted above, we are proposing to approve SWCAA 400–171 to apply in lieu of WAC 173–400–171 within SWCAA's jurisdiction.

*X. SWCAA 400–190 Requirements for Nonattainment Areas; SWCAA 400–200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques; SWCAA 400–205 Adjustment for Atmospheric Conditions; and SWCAA 400–210 Emission Requirements of Prior Jurisdictions*

Aside from minor updates to the citations, these long-standing provisions remain substantially unchanged since the EPA's last approval in 1997. They also closely match the corresponding EPA-approved Ecology provisions of WAC 173–400–190, 173–400–200, 173–400–205, and 173–400–210. Minor revisions include the updating of SWCAA 400–190 to reflect the major source specific nonattainment NSR requirements contained in SWCAA 800 through 860. SWCAA also revised SWCAA 400–200 to include vertical dispersion requirements that are not present in the corresponding WAC requirements. SWCAA is not submitting, and the EPA is not proposing to approve, these additional requirements contained in SWCAA 400–200(1). The remaining changes reflect the name change from “Southwest Air Pollution Control Authority” to “Southwest Clean Air Agency” that occurred after the EPA's 1997 approval. With the exception of SWCAA 400–200(1) noted above, we are proposing to approve SWCAA 400–190, 400–200, 400–205, and 400–210 to apply in lieu of the corresponding Ecology provisions in WAC 173–400–190, 173–400–200, 173–400–205, and 173–400–210.

<sup>1</sup> Janet McCabe, Principal Deputy Assistant Administrator, “Minor New Source Review Program Public Notice Requirements under 40 CFR 51.161(b)(3).” Memorandum to EPA Air Division Directors, Regions 1–10, April 17, 2012.

*Y. SWCAA 400–220 Requirements for Board Members; SWCAA 400–230 Regulatory Actions and Civil Penalties; SWCAA 400–240 Criminal Penalties; SWCAA 400–250 Appeals; SWCAA 400–260 Conflict of Interest; SWCAA 400–270 Confidentiality of Records and Information; and SWCAA 400–280 Powers of Agency*

The EPA reviews and approves state and local clean air agency submissions to ensure they provide adequate enforcement authority and other general authority to implement and enforce the SIP. However, regulations describing such agency enforcement and other general authority are generally not incorporated by reference so as to avoid potential conflict with the EPA's independent authorities. The EPA reviewed and is proposing to approve SWCAA 400–220, 400–230, 400–240, 400–250, 400–260, 400–270, and 400–280 as providing SWCAA adequate enforcement and other general authority for purposes of implementing and enforcing its SIP. However, we are not proposing to incorporate these provisions by reference into the SIP codified in 40 CFR 52.2470(c). Instead, the EPA is proposing to include these provisions in 40 CFR 52.2470(e), *EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures*, as approved but not incorporated by reference regulatory provisions. The EPA is also proposing to approve SWCAA 400–220, 400–230, 400–240, 400–250, and 400–260 to apply in lieu of the corresponding Ecology provisions of WAC 173–400–220, 173–400–230, 173–400–240, 173–400–250, and 173–400–260. SWCAA 400–270 and 400–280 have no corresponding provisions in the WAC.

*Z. SWCAA 400–800 Major Stationary Source and Major Modification in a Nonattainment Area; SWCAA 400–810 Major Stationary Source and Major Modification Definitions; SWCAA 400–820 Determining If a New Stationary Source or Modification to a Stationary Source Is Subject to These Requirements; SWCAA 400–830 Permitting Requirements; SWCAA 400–840 Emission Offset Requirements; SWCAA 400–850 Actual Emissions—Plantwide Applicability Limitation (PAL); SWCAA 400–860 Public Involvement Procedures*

Aside from minor edits to the citations to reflect the SWCAA regulatory structure, the SWCAA major nonattainment NSR program contained

in SWCAA 400–800 through 860 is nearly identical to the Ecology major nonattainment NSR program in WAC 173–400–800 through 860, which the EPA approved on November 7, 2014 (79 FR 59653). We note that Ecology's major nonattainment NSR program for PM<sub>2.5</sub> under WAC 173–400–800 through 860 was reviewed pursuant to the EPA's 2008 PM<sub>2.5</sub> New Source Review Rule (73 FR 28321, May 16, 2008). The EPA's 2008 rule was remanded to the EPA by the U.S. Court of Appeals for the District of Columbia Circuit and replaced by a revised implementation rule published August 24, 2016, which imposes additional requirements for PM<sub>2.5</sub> nonattainment areas (81 FR 58010). Because SWCAA does not have nonattainment areas within its jurisdiction for any criteria pollutant, including PM<sub>2.5</sub>, the EPA did not review SWCAA 400–800 through 860 for consistency with the newly revised PM<sub>2.5</sub> implementation rule; nor does SWCAA have an obligation to submit rule revisions to address the 2016 PM<sub>2.5</sub> implementation rule at this time. However, we note that the federal major nonattainment NSR requirements remain unchanged for all other criteria pollutants since our review and approval of WAC 173–400–800 through 860. We are therefore proposing approval of SWCAA 400–800 through 860 as meeting the current major nonattainment NSR requirements for all criteria pollutants except PM<sub>2.5</sub> and proposing to approve these provisions to apply in lieu of the corresponding Ecology provisions of WAC 173–400–800 through 860.

*AA. WAC 173–400–117 Special Protection Requirements for Federal Class I Areas; WAC 173–400–118 Designation of Class I, II, and III Areas; and WAC 173–400–560 General Order of Approval*

As discussed above, WAC 173–400–020(1) states that, “The 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.” SWCAA 400 does not contain any rules that correspond to the EPA-approved provisions of WAC 173–400–117, 173–400–118, or 173–400–560. In this action, the EPA therefore proposes to approve these WAC provisions within SWCAA's jurisdiction, which the EPA has previously approved into the

Washington SIP for areas under Ecology's jurisdiction.

*BB. Appendix A—SWCAA Method 9, Visual Opacity Determination Method and Appendix B—Description of Vancouver Ozone and Carbon Monoxide Maintenance Area Boundary*

SWCAA Appendix A corresponds to the EPA Test Method 9—*Visual Determination of the Opacity of Emissions from Stationary Sources* contained in 40 CFR part 60, Appendix A. SWCAA explains that, “The difference between the SWCAA Method 9 and EPA Method 9 is in the data reduction section. The SWCAA method establishes a three-minute period in any one-hour period where opacity cannot exceed an opacity limit. For the SWCAA method, 13 readings in a 1-hour period or less, above the established opacity limit, no matter how much, constitutes a violation. The EPA method is an arithmetic average of any 24 consecutive readings at 15-second intervals. These values are averaged and this average value cannot exceed the established opacity limit.” The different data reduction methods are needed to accommodate the differences in the forms of the opacity standards in 40 CFR part 60 and in SWCAA's rules. The EPA reviewed SWCAA Appendix A and we are proposing to determine that it meets the requirements for approval under section 110 of the CAA.

SWCAA Appendix B—*Description of Vancouver Ozone and Carbon Monoxide Maintenance Area Boundary* was previously submitted as part of the Vancouver Carbon Monoxide Maintenance Plan (61 FR 54560, October 21, 1996) and the Vancouver Portion of the AQMA Ozone Maintenance Plan (62 FR 27204, May 19, 1997). While it remains unchanged, the EPA is proposing to revise 40 CFR 52.2470(c)—*Table 8—Additional Regulations Approved for the Southwest Clean Air Agency (SWCAA) Jurisdiction* to more clearly include Appendix B.

### III. The EPA's Proposed Action

#### A. Regulations To Approve and Incorporate by Reference Into the SIP

The EPA proposes to approve and incorporate by reference into the Washington SIP at 40 CFR 52.2470(c)—*Table 8—Additional Regulations Approved for the Southwest Clean Air Agency (SWCAA) Jurisdiction*, the SWCAA and Ecology regulations listed in Tables 1 and 2 below for sources within SWCAA's jurisdiction.

TABLE 1—SOUTHWEST CLEAN AIR AGENCY (SWCAA) REGULATIONS FOR PROPOSED APPROVAL AND INCORPORATION BY REFERENCE

State/local citation	Title/subject	State/local effective date	Explanation
<b>SWCAA 400—General Regulations for Air Pollution Sources</b>			
400–010	Policy and Purpose	03/18/01	
400–020	Applicability	10/09/16	
400–030	Definitions	10/09/16	Except: 400–030(21) and (129).
400–036	Portable Sources From Other Washington Jurisdictions.	10/09/16	
400–040	General Standards for Maximum Emissions	10/09/16	Except: 400–040(1)(a), (c) and (d); 400–040(2); and 400–040(4).
400–050	Emission Standards for Combustion and Incineration Units.	10/09/16	Except: 400–050(3); 400–050(5); and 400–050(6).
400–060	Emission Standards for General Process Units	10/09/16	
400–070	General Requirements for Certain Source Categories.	10/09/16	Except: 400–070(2)(a); 400–070(3)(b); 400–070(5); 400–070(6); 400–070(7); 400–070(8)(c); 400–070(9); 400–070(10); 400–070(11); 400–070(12); 400–070(14); and 400–070(15)(c).
400–072	Small Unit Notification for Selected Source Categories.	10/09/16	Except: 400–072(5)(a)(ii)(B); 400–072(5)(d)(ii)(B); 400–072(5)(d)(iii)(A); 400–072(5)(d)(iii)(B); and all reporting requirements related to toxic air pollutants.
400–074	Gasoline Transport Tanker Registration	11/15/09	Except: 400–074(2).
400–081	Startup and Shutdown	10/09/16	
400–091	Voluntary Limits on Emissions	10/09/16	
400–105	Records, Monitoring and Reporting	10/09/16	Except: Reporting requirements related to toxic air pollutants.
400–106	Emission Testing and Monitoring at Air Contaminant Sources.	10/09/16	Except: 400–106(1)(d) through (g); and 400–106(2).
400–109	Air Discharge Permit Applications	10/09/16	Except: The toxic air pollutant emissions thresholds contained in 400–109(3)(d); 400–109(3)(e)(ii); and 400–109(4).
400–110	Application Review Process for Stationary Sources (New Source Review).	10/09/16	Except: 400–110(1)(d).
400–111	Requirements for New Sources in a Maintenance Plan Area.	10/09/16	Except: 400–111(7).
400–112	Requirements for New Sources in Nonattainment Areas.	10/09/16	Except: 400–112(6).
400–113	Requirements for New Sources in Attainment or Nonclassifiable Areas.	10/09/16	Except: 400–113(5).
400–114	Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source.	11/09/03	
400–116	Maintenance of Equipment	11/09/03	
400–130	Use of Emission Reduction Credits	10/09/16	
400–131	Deposit of Emission Reduction Credits Into Bank	10/09/16	
400–136	Maintenance of Emission Reduction Credits in Bank	10/09/16	
400–151	Retrofit Requirements for Visibility Protection	11/09/03	
400–161	Compliance Schedules	03/18/01	
400–171	Public Involvement	10/09/16	Except: 400–171(2)(a)(xii).
400–190	Requirements for Nonattainment Areas	10/09/16	
400–200	Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques.	10/09/16	Except: 400–200(1).
400–205	Adjustment for Atmospheric Conditions	03/18/01	
400–210	Emission Requirements of Prior Jurisdictions	03/18/01	
400–800	Major Stationary Source and Major Modification in a Nonattainment Area.	10/09/16	
400–810	Major Stationary Source and Major Modification Definitions.	10/09/16	
400–820	Determining If a New Stationary Source or Modification to a Stationary Source is Subject to These Requirements.	10/09/16	
400–830	Permitting Requirements	10/09/16	
400–840	Emission Offset Requirements	10/09/16	
400–850	Actual Emissions—Plantwide Applicability Limitation (PAL).	10/09/16	
400–860	Public Involvement Procedures	10/09/16	
Appendix A	SWCAA Method 9 Visual Opacity Determination Method.	10/09/16	
Appendix B	Description of Vancouver Ozone and Carbon Monoxide Maintenance Area Boundary.	10/09/16	

TABLE 2—WASHINGTON STATE DEPARTMENT OF ECOLOGY REGULATIONS FOR PROPOSED APPROVAL AND INCORPORATION BY REFERENCE

State/local citation	Title/subject	State/local effective date	Explanation
<b>Chapter 173–400 WAC, General Regulations for Air Pollution Sources</b>			
173–400–117 ....	Special Protection Requirements for Federal Class I Areas.	12/29/12	For permits issued under the applicability provisions of WAC 173–400–800.
173–400–118 ....	Designation of Class I, II, and III Areas .....	12/29/12	Except: The part of 173–400–560(1)(f) that says, “173–460 WAC”.
173–400–560 ....	General Order of Approval .....	12/29/12	

*B. Regulations To Approve But Not Incorporate by Reference*

In addition to the regulations proposed for approval and incorporation by reference above, the EPA reviews and approves state and local clean air agency submissions to ensure they provide adequate enforcement authority and other general authority to implement and enforce the SIP. However, regulations describing such agency enforcement and other general authority are generally not incorporated by reference so as to avoid potential conflict with the EPA’s independent authorities. As discussed above, the EPA has reviewed and is proposing to approve SWCAA 400–220 *Requirements for Board Members*, SWCAA 400–230 *Regulatory Actions and Civil Penalties*, SWCAA 400–240 *Criminal Penalties*, SWCAA 400–250 *Appeals*, SWCAA 400–260 *Conflict of Interest*; SWCAA 400–270 *Confidentiality of Records and Information*, and SWCAA 400–280 *Powers of Agency* as having adequate enforcement and other general authority for purposes of implementing and enforcing its SIP, but is not incorporating these sections by reference into the SIP codified in 40 CFR 52.2470(c). Instead, the EPA is proposing to include these sections in 40 CFR 52.2470(e), *EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures*, as approved but not incorporated by reference regulatory provisions.

*C. Regulations to Remove From the SIP*

The Ecology regulations contained in Washington’s SIP at 40 CFR 52.2470(c)—*Table 8—Additional Regulations Approved for the Southwest Clean Air Agency (SWCAA) Jurisdiction* were last approved by the EPA on June 2, 1995 (60 FR 28726). As previously discussed, under the Washington Clean Air Act local clean air agencies have the option of adopting and implementing equally stringent or more stringent corresponding provisions to apply in lieu of Chapter 173–400 WAC, or parts

of Chapter 173–400 WAC. With the exception of updated versions of WAC 173–400–117, 173–400–118, and 173–400–560, SWCAA requested that the submitted SWCAA regulations replace the existing WAC provisions currently in the SIP for its jurisdiction. Also, as previously discussed, the EPA is proposing to remove from the SIP SWCAA 400–050(3) [formerly 400–050(2)], 400–052, 400–070(6), 400–070(8)(c) [formerly 400–070(7)(c) and (d)], 400–074(2), 400–100, 400–101, and 400–109(4) because removal of these provisions would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of section 110 of the CAA. We also note that the SIP includes a reference to SWCAA 400–090 which was renumbered to SWCAA 400–091 on September 21, 1995. We are proposing to remove the reference to SWCAA 400–090 in the SIP which was inadvertently not addressed as part of our February 26, 1997 approval of SWCAA 400–091 (62 FR 8624).

*D. Scope of Proposed Action*

This proposed revision to the SIP applies specifically to the SWCAA jurisdiction incorporated into the SIP at 40 CFR 52.2470(c)—*Table 8*. As discussed in our October 3, 2014 action (79 FR 59653, at page 59654), local air agency jurisdiction in Washington is generally defined on a geographic basis; however there are exceptions. By statute, SWCAA does not have authority for sources under the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC). See Revised Code of Washington Chapter 80.50. Under the applicability provisions of WAC 173–405–012, 173–410–012, and 173–415–012, SWCAA also does not have jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. For these sources, Ecology retains statewide, direct jurisdiction. Ecology also retains statewide, direct jurisdiction for the PSD permitting program. Therefore, the EPA is not

approving into 40 CFR 52.2470(c)—*Table 8* those provisions of Chapter 173–400 WAC related to the PSD program. Specifically, these provisions are WAC 173–400–116 and WAC 173–400–700 through 750, which the EPA has already approved as applying state-wide.

As described in our April 29, 2015 action, jurisdiction to implement the visibility permitting program contained in WAC 173–400–117 varies depending on the situation. Ecology retains authority to implement WAC 173–400–117 as it relates to PSD permits. See 80 FR 23721. However, for facilities subject to major nonattainment NSR under the applicability provisions of SWCAA 400–800, we are proposing that SWCAA would be responsible for implementing those parts of WAC 173–400–117 as they relate to major nonattainment NSR permits. See 80 FR 23726. If finalized, the EPA is also proposing to modify the visibility protection Federal Implementation Plan contained in 40 CFR 52.2498 to reflect the approval of WAC 173–400–117 as it applies to implementation of the major nonattainment NSR program in SWCAA’s jurisdiction.

Lastly, this SIP revision is not approved to apply in Indian reservations in the State, or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

**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 shown in the tables in section III.A. *Regulations to Approve and Incorporate by Reference into the SIP* and the rules proposed for removal from the SIP in section III.C. *Regulations to Remove from the SIP*. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA

Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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. This SIP revision is not approved to apply in Indian reservations in the State, or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

#### 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: January 4, 2017.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2017-01090 Filed 1-18-17; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### 42 CFR Part 100

#### National Vaccine Injury Compensation Program: Statement of Reasons for Not Conducting a Rulemaking Proceeding

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** In accordance with section 2114(c)(2)(B) of the Public Health Service Act, 42 U.S.C. 300aa-14(c)(2)(B), notice is hereby given concerning the reasons for not conducting a rulemaking proceeding to add neurological disorders or conditions as injuries associated with seasonal influenza vaccines to the Vaccine Injury Table.

**DATES:** Written comments are not being solicited.

**FOR FURTHER INFORMATION CONTACT:** Narayan Nair, MD, Director, Division of Injury Compensation Programs (DICP), Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 8N146B, Rockville, Maryland 20857, or by telephone 301-443-6593.

**SUPPLEMENTARY INFORMATION:** The National Childhood Vaccine Injury Act of 1986, (Vaccine Act), Title III of Public Law 99-660, established the National

Vaccine Injury Compensation Program (VICP) for persons found to be injured by vaccines.<sup>1</sup> Under this federal program, petitions for compensation are filed with the United States Court of Federal Claims (Court). The Court, acting through special masters, makes findings as to eligibility for, and amount of, compensation. To gain entitlement to compensation under VICP for a covered vaccine, a petitioner must establish a vaccine-related injury or death in one of the following ways (unless another cause is found): (1) By proving that the first symptom of an injury or condition, as defined by the Qualifications and Aids to Interpretation, occurred within the time period listed on the Vaccine Injury Table (Table), and, therefore, is presumed to be caused by a vaccine; (2) by proving vaccine causation, if the injury or condition is not on the Table or did not occur within the time period specified on the Table; or (3) by proving that the vaccine significantly aggravated a pre-existing condition.

The statute authorizing VICP provides for the inclusion of additional vaccines in VICP when they are recommended by the Centers for Disease Control and Prevention for routine administration to children.<sup>2</sup> Consistent with section 13632(a)(3) of Public Law 103-66, the regulations governing VICP provide that such vaccines will be included in the Table as of the effective date of an excise tax to provide funds for the payment of compensation with respect to such vaccines.<sup>3</sup> The statute authorizing VICP also authorizes the Secretary to create and modify a list of injuries, disabilities, illnesses, conditions, and deaths (and their associated time frames) associated with each category of vaccines included on the Table.<sup>4</sup> Finally, the Vaccine Act provides that:

[a]ny person (including the Advisory Commission on Childhood Vaccines) [the Commission] may petition the Secretary to propose regulations to amend the Vaccine Injury Table. Unless clearly frivolous, or initiated by the Commission, any such petition shall be referred to the Commission for its recommendations. Following—

(A) Receipt of any recommendation of the Commission, or

(B) 180 days after the date of the referral to the Commission, whichever occurs first, the Secretary shall conduct a rule-making proceeding on the matters proposed in the petition or publish

<sup>1</sup> 42 U.S.C. 300aa-10 *et seq.*

<sup>2</sup> Section 2114(e)(2) of the PHS Act, 42 U.S.C. 300aa-14(e)(2).

<sup>3</sup> 42 CFR 100.3(c)(8).

<sup>4</sup> Sections 2114(c) and 2114(e)(2) of the PHS Act, 42 U.S.C. 300aa-14(c) and 300aa-14(e)(2).