

substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 30, 2021.

**Debra Shore,**

*Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R10–OAR–2021–0751; FRL–9211–01–R10]

#### Air Plan Approval; Washington; Yakima Regional Clean Air Agency, General Air Quality Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Washington State Implementation Plan (SIP) that were submitted by the Department of Ecology (Ecology) in coordination with the Yakima Regional Clean Air Agency (YRCAA). In 2014, 2015, 2016, and 2020, the EPA approved revisions to the *General Regulations for Air Pollution Sources* promulgated by Ecology in the Washington Administrative Code (WAC). In this action, the EPA proposes to update the SIP for YRCAA's jurisdiction to reflect these changes to the WAC. We also propose to update certain YRCAA regulations currently in the SIP, remove obsolete regulations, and approve a small set of YRCAA regulations to replace or supplement the corresponding WAC regulations for sources in YRCAA's jurisdiction.

**DATES:** Comments must be received on or before January 6, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2021–0751 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

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

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#### I. Background for Proposed Action

On January 27, 2014, Ecology submitted revisions to update the *General Regulations for Air Pollution Sources* contained in Chapter 173–400 WAC. The EPA approved these updates in three phases on October 3, 2014 (79 FR 59653), November 7, 2014 (79 FR

66291), and April 29, 2015 (80 FR 23721).<sup>1</sup> Under the revised applicability provisions of WAC 173–400–020 approved into the SIP on October 3, 2014, the regulations contained in Chapter 173–400 WAC 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 Revised Code of Washington (RCW) 70.94.141 and 70.94.331.”<sup>2</sup> Therefore, 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 revised Chapter 173–400 WAC regulations as they apply to local clean air agency jurisdictions on a case-by-case basis in separate, future actions. Subsequent local clean air agency actions related to Chapter 173–400 WAC include our approval of the Benton Clean Air Agency (80 FR 71695, November 17, 2015), Southwest Clean Air Agency (82 FR 17136, April 10, 2017), Puget Sound Clean Air Agency (85 FR 22355, April 22, 2020), Northwest Clean Air Agency (85 FR 36154, June 15, 2020), and Spokane Regional Clean Air Agency (86 FR 24718, May 10, 2021).

On October 14, 2021, the Director of Ecology, as the Governor's designee for SIP revisions, submitted a request to update the air quality regulations in the SIP as they apply to YRCAA's jurisdiction in 40 CFR 52.2470(c), Table 10—*Additional Regulations Approved for the Yakima Regional Clean Air Agency (YRCAA) Jurisdiction*. YRCAA's jurisdiction consists of Yakima County, excluding Indian reservation land or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. YRCAA also does not have jurisdiction over certain facilities discussed in section IV.D. *Scope of Proposed Action* of this document. We note that YRCAA regulatory revisions related to outdoor burning, agricultural burning, and wood heaters are outside the scope of this current action and addressed separately.

<sup>1</sup> In subsequent actions on October 6, 2016 (81 FR 69385) and February 24, 2020 (85 FR 10302) we approved revisions to the WAC that incorporated by reference the most recent changes to the Federal regulations and other minor changes.

<sup>2</sup> These statutory provisions were subsequently re-codified to RCW 70A.15.2040 and 70A.15.3000, with no substantive revisions to the statutory text. For a more detailed discussion of applicability see page 39352 of the EPA's proposed approval of WAC 173–400–020 (79 FR 39351, July 10, 2014).

## II. Proposed Revisions, YRCAA Regulation 1

The EPA last approved updates to YRCAA Regulation 1 on February 2, 1998 (63 FR 5269). Effective December 1, 2002, YRCAA repealed sections 2.04 *Public Participation*, 3.01 *Emission Standards*, 3.11 *Monitoring, Recordkeeping, and Reporting*, and 4.02 *New Source Review* to rely on the statewide provisions of Chapter 173–400 WAC. On October 8, 2020, YRCAA adopted additional changes to align with the WAC and other clarifying changes. The Washington State Register listing the most recent changes to the YRCAA regulations is included in the docket for this action and will not be described in detail here. A brief summary of the major changes since our last SIP approval is provided below.

### A. Sections 1.01 *Name of Agency*, 1.02 *Short Title*, and 1.03 *Policy*

These changes reflect the name change from “Yakima County Clean Air Authority” to “Yakima Regional Clean Air Agency.” YRCAA also renumbered and modified the policy section (now section 1.03) since the last version approved into the SIP. With respect to section 1.03, we note that Ecology and YRCAA did not submit sub-section H related to the State Environmental Policy Act (SEPA). These SEPA provisions are outside the scope of the SIPs approved under Clean Air Act (CAA) section 110. Lastly, we propose to approve YRCAA Regulation 1, section 1.03 *Policy* to replace WAC 173–400–010 *Policy and Purpose*.

### B. Appendix A *Definitions of Words and Phrases* [Formerly Section 1.03 *Definitions*]

As discussed above, in 2002, YRCAA repealed sections 2.04 *Public Participation*, 3.01 *Emission Standards*, 3.11 *Monitoring, Recordkeeping, and Reporting*, and 4.02 *New Source Review* to rely on the statewide provisions of Chapter 173–400 WAC. To avoid potential inconsistency with the WAC, YRCAA eliminated all definitions in the former section 1.03 *Definitions* that were duplicative with Chapter 173–400 WAC and moved the remaining definitions to Appendix A. Similarly, on October 8, 2020, YRCAA eliminated all definitions in Appendix A that were duplicative with Chapters 173–425, 173–430, and 173–433 WAC because the WAC definitions already apply statewide. The EPA is proposing to approve the revised Appendix A, with the exception of asbestos control program definitions, which YRCAA did not submit for approval because they are

outside the scope of SIPs under CAA section 110.

### C. Section 1.04 *Applicability*

This section defines YRCAA’s jurisdiction over certain sources within Yakima County. It complements and is consistent with WAC 173–400–020 *Applicability*. A full discussion of applicability as it relates to the Energy Facility Site Evaluation Council (EFSEC), Indian country, and sources directly regulated or permitted by Ecology is included in section IV.D. *Scope of Proposed Action* of this document. The EPA is proposing to approve section 1.04, but it does not replace WAC 173–400–020 in YRCAA’s jurisdiction because WAC 173–400–020 is broader in scope in that it contains the criteria for when a local standard applies in lieu of a provision of Chapter 173–400 WAC.

### D. Sections 1.05 *Roles and Responsibilities* and 2.01 *Authority and Investigation*

These sections describe the roles, responsibilities, powers, and duties of the board of directors, the air pollution control officer, and any advisory councils appointed to advise and consult in development and implementation of the regulations. As described in section IV.B of this document, 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 to avoid potential conflict with the EPA’s independent authorities. The EPA is therefore proposing to approve but not incorporate by reference sections 1.05 and 2.01.

### E. Section 1.06 *Records*

This section defines the policy for protecting records and making them available to the public. Many of these provisions were approved into the SIP under the former section 2.04 *Confidentiality*. YRCAA subsequently consolidated all the record provisions into section 1.06 and repealed section 2.04. We are proposing to approve section 1.06 into the SIP and remove the repealed section 2.04 from the SIP. We are also proposing to approve section 1.06 to replace WAC 173–400–175 *Public Information* within YRCAA’s jurisdiction.

### F. Section 1.07 *General Provisions*

This section contains several general provisions, some of which were previously approved into the SIP under the former section 2.03 *Miscellaneous Provisions*. Of note are the two sub-sections 1.07(B)(1) and (2). Subsection 1.07(B)(1) states, “No person shall make any false material statement, representation or certification in any form, notice or report required under Chapter 70A.15 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.” This YRCAA provision, adapted to reflect local agency authority, replaces the nearly identical text contained in WAC 173–400–105(6). Subsection 1.07(B)(2) states, “No person shall render inaccurate any monitoring device or method required under Chapter 70A.15 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.” This YRCAA provision replaces the nearly identical text contained in WAC 173–400–105(8). The EPA is proposing to approve section 1.07 and to approve sub-sections (B)(1) and (2) to replace WAC 173–400–105(6) & (8). We are also proposing to remove the subsequently revoked section 2.03 from the SIP.

### G. Section 2.02 *Authority To Collect Fees*

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. YRCAA therefore submitted section 2.02 *Authority to Collect Fees* to demonstrate adequate fee authority to implement the major source nonattainment new source review program under WAC 173–400–800 through 173–400–860, should the need arise in the future.<sup>3</sup> Although 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). We are therefore proposing to approve section 2.02 as part of the approved but not incorporated by reference portion of the SIP under 40 CFR 52.2470(e), and to remove from the SIP the previously approved fee provisions at sections 13.01, 13.02, and 13.03.

<sup>3</sup> There are currently no designated nonattainment areas in the State of Washington to which WAC 173–400–800 through 173–400–860 would apply.

### H. Section 2.03 *Applicable State and Federal Regulations*

This section replaces the revoked section 12.01 *State Regulations*, which was approved into the SIP in 1998. Except for Chapter 173–400 WAC discussed in more detail below, the remaining state WAC and federal Code of Federal Regulations (CFR) provisions cited in section 2.03 would apply in YRCAA’s jurisdiction according to the terms of the state and federal regulations and do not need to be included as part of the local agency SIP submission. Therefore, we are proposing to remove the revoked section 12.01 from the SIP. For a full list of statewide WAC provisions approved into the SIP, please see 40 CFR 52.2470(c) *Table 1—Regulations Approved Statewide*. For a list of updated Chapter 173–400 WAC provisions proposed for approval in YRCAA’s jurisdiction, please see section IV.A *Regulations to Approve and Incorporate by Reference into the SIP* in this document.

#### I. Section 2.04 *Public Participation in Permitting*

As previously discussed, in 2002, YRCAA repealed section 2.04 *Public Participation* to rely on WAC 173–400–171 *Public Notice and Opportunity for Public Comment*. On October 8, 2020, YRCAA reestablished section 2.04, creating a cross reference to the provisions of WAC 173–400–171 for permits issued under the new source review program. We are proposing to approve section 2.04. However, section 2.04 will not replace WAC 173–400–171, because the WAC is broader in scope and covers public participation beyond just permitting.

#### J. Section 2.05 *Appeals*

This section cites to Washington statutory provisions for the appeals process, as well as the regulatory provisions of WAC 173–400–250. As previously described with respect to sections 1.05 and 2.01, the EPA reviews and approves state and local clean air agency submissions to ensure they provide adequate general authority to implement and enforce the SIP. However, regulations describing such agency enforcement and other general authority are generally not incorporated by reference to avoid potential conflict with the EPA’s independent authorities. The EPA is therefore proposing to approve but not incorporate by reference section 2.05.

### K. Sections 3.01 *General Rules and 3.08 Specific Dust Controls*

Section 3.01 contains general rules applicable to all sources under YRCAA’s jurisdiction. Section 3.08 contains additional provisions to address fugitive dust from construction and cattle feeding operations. We note that YRCAA is not submitting, and the EPA is not proposing to approve, subsections 3.01(D) *Variance Process*, 3.08(A)(3)(b) *Emergencies*, and 3.08(B)(3) *Emergencies*. It is the EPA’s longstanding position that these types of provisions are not appropriate for approval into the SIP. See 69 FR 17368, 17370 (April 2, 2004); see also 80 FR 33840, 33917–33918 (June 12, 2015). We also note that these provisions, which add additional requirements to address a subset of potential fugitive dust sources, do not replace the broader statewide provisions of WAC 173–400–040(9) *Fugitive Dust*. With the exceptions noted above, we are proposing to approve sections 3.01 and 3.08.

#### L. Section 4.01 *Registration Program*

Section 4.01 contains the YRCAA-specific registration program, which replaces the registration program of WAC 173–400–099 through 173–400–104. Section 4.01 cites to and uses the source categories in WAC 173–400–100 for applicability. Section 4.01 also uses emissions thresholds established in the WAC for determining annual or triennial emissions reporting to support the federal Air Emissions Reporting Requirements (40 CFR part 51, subpart A) and other local program requirements. We are proposing to approve section 4.01, except for requirements related to Toxic Air Pollutants, which YRCAA did not submit because such provisions are outside the scope of CAA section 110 requirements for SIPs.

#### M. Section 4.03 *Voluntary Limits on Emissions*

Section 4.03 replaces WAC 173–400–091 *Voluntary Limits on Emissions*. Section 4.03 contains requirements nearly identical to the WAC, but YRCAA adapted the language slightly to reflect local agency implementation. We are proposing to approve section 4.03 to replace WAC 173–400–091 for sources within YRCAA’s jurisdiction as it relates to CAA section 110 requirements for SIPs.

### N. Sections 5.01 *General Information, 5.02 Additional or Alternative Enforcement Actions, and 5.03 Penalties*

These sections describe YRCAA’s compliance, enforcement, and penalty authorities. As described in section IV.B of this document, 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 to avoid potential conflict with the EPA’s independent authorities. The EPA is therefore proposing to approve but not incorporate by reference sections 5.01, 5.02, and 5.03.

### III. Applicability of Chapter 173–400 WAC

As previously discussed, a local clean air agency has the authority under WAC 173–400–020 to establish local regulations to supplement, or act in lieu of, the statewide Chapter 173–400 WAC provisions for sources under its jurisdiction. YRCAA generally implements and enforces Chapter 173–400 WAC, with a small set of YRCAA-specific provisions replacing certain sections or subsections of Chapter 173–400 WAC. The EPA is generally proposing to approve the most recent updates to Chapter 173–400 WAC to apply within YRCAA’s jurisdiction subject to the exclusions and conditions discussed in section IV *The EPA’s Proposed Action* of this document. This approach is consistent with our previous SIP actions for Benton Clean Air Agency (80 FR 71695, November 17, 2015), Southwest Clean Air Agency (82 FR 17136, April 10, 2017), Puget Sound Clean Air Agency (85 FR 22355, April 22, 2020), Northwest Clean Air Agency (85 FR 36154, June 15, 2020), and Spokane Regional Clean Air Agency (86 FR 24718, May 10, 2021).

### IV. The EPA’s Proposed Action

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

The EPA is proposing to approve and incorporate by reference into the Washington SIP at 40 CFR 52.2470(c)—*Table 10—Additional Regulations Approved for the Yakima Regional Clean Air Agency (YRCAA) Jurisdiction*, the YRCAA and Ecology regulations listed in Tables 1 and 2 of this document below for sources within YRCAA’s jurisdiction. Table 1 shows the updated YRCAA regulations,

including those YRCAA provisions that replace sections or subsections of Chapter 173–400 WAC.

TABLE 1—UPDATED YAKIMA REGIONAL CLEAN AIR AGENCY REGULATIONS

State/local citation	Title/subject	State/local effective date	Explanation
<b>Regulation 1</b>			
1.01 .....	Name of Agency .....	11/09/20	
1.02 .....	Short Title .....	11/09/20	
1.03 .....	Policy .....	11/09/20	Except sub-section H. Replaces WAC 173–400–010.
1.04 .....	Applicability .....	11/09/20	
1.06 .....	Records .....	11/09/20	Replaces WAC 173–400–175.
1.07 .....	General Provisions ..	11/09/20	Replaces WAC 173–400–105(6) & (8).
2.04 .....	Public Participation in Permitting.	11/09/20	
3.01 .....	General Rules .....	11/09/20	Except sub-section D.
3.08 .....	Specific Dust Controls.	11/09/20	Except sub-sections 3.08(A)(3)(b) and 3.08(B)(3).
4.01 .....	Registration Program	11/09/20	Excluding any provisions related to the regulation of Toxic Air Pollutants.
4.03 .....	Voluntary Limits on Emissions.	11/09/20	Replaces WAC 173–400–091 (state effective 4/1/11). The 9/20/93 version of WAC 173–400–091 continues to be approved under the authority of CAA Section 112(l) with respect to Section 112 hazardous air pollutants. See 60 FR 28726 (June 2, 1995).
Appendix A .....	Definitions of Words and Phrases.	11/09/20	Except asbestos control program definitions.
Appendix B .....	Definitions of Acronyms and Abbreviations.	11/09/20	

Table 2 of this document shows the updated Chapter 173–400 WAC provisions that YRCAA and Ecology requested apply to the SIP within YRCAA’s jurisdiction. We note that many of the exclusions listed in Table 2 are identical to the exclusions for Ecology’s direct jurisdiction. These exclusions primarily relate to Toxic Air Pollutants or other requirements which YRCAA and Ecology did not submit because they are outside the scope of

regulating criteria pollutants under CAA section 110.<sup>4</sup> Table 2 also excludes those parts of the WAC explicitly replaced by the Regulation 1 provisions in Table 1 of this document.

The EPA previously approved Chapter 173–400 WAC as it applied to YRCAA’s jurisdiction on June 2, 1995 (60 FR 28726). We note that YRCAA and Ecology did not submit updates for provision that remain unchanged since our 1995 approval. These provisions are WAC 173–400–161, WAC 173–400–190,

WAC 173–400–205, and WAC 173–400–210. Similarly, YRCAA and Ecology did not request updates to Chapter 173–400 WAC that have not yet been approved by the EPA for Ecology’s direct jurisdiction.<sup>5</sup> For those sections or subsections of Chapter 173–400 WAC that are not updated as part of this action, the EPA will retain, unchanged, our 1995 approval of those sections or subsections as it applies to YRCAA’s jurisdiction.

TABLE 2—UPDATED WASHINGTON DEPARTMENT OF ECOLOGY REGULATIONS TO APPLY WITHIN YRCAA’S JURISDICTION

State citation	Title/subject	State effective date	Explanations
<b>Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources</b>			
173–400–020 ....	Applicability .....	12/29/12	
173–400–025 ....	Adoption of Federal Rules.	9/16/18	
173–400–030 ....	Definitions .....	9/16/18	Except: 173–400–030(6); 173–400–030(32); 173–400–030(38); 173–400–030(45); 173–400–030(83); 173–400–030(89); 173–400–030(96); 173–400–030(97); 173–400–030(100); 173–400–030(103); 173–400–030(104).
173–400–036 ....	Relocation of Portable Sources.	12/29/12	
173–400–040 ....	General Standards for Maximum Emissions.	9/16/18	Except: 173–400–040(2); 173–400–040(3); 173–400–040(5);

<sup>4</sup> See 79 FR 39351 (July 10, 2014).

<sup>5</sup> YRCAA and Ecology did not request, and the EPA is not proposing to approve updates to the following Chapter 173–400 WAC sections or

subsections to apply within YRCAA’s jurisdiction at this time: 173–400–030(6), (32), (38), (45), (83), (89), (97), (100), (103), and (104); 173–400–040(2); 173–400–070; 173–400–081; WAC 173–400–107;

and 173–400–171(3)(o). See 85 FR 10302 (February 24, 2020) for the most recent update of Chapter 173–400 WAC in the SIP.

TABLE 2—UPDATED WASHINGTON DEPARTMENT OF ECOLOGY REGULATIONS TO APPLY WITHIN YRCAA’S JURISDICTION—Continued

State citation	Title/subject	State effective date	Explanations
173-400-050 ....	Emission Standards for Combustion and Incineration Units.	9/16/18	Except: 173-400-050(2); 173-400-050(4); 173-400-050(5); 173-400-050(6).
173-400-060 ....	Emission Standards for General Process Units.	11/25/18	
173-400-105 ....	Records, Monitoring, and Reporting.	11/25/18	Except 173-400-105(6) & (8).
173-400-110 ....	New Source Review (NSR) for Sources and Portable Sources.	12/29/12	Except: 173-400-110(1)(c)(ii)(C); 173-400-110(1)(e); 173-400-110(2)(d); The part of WAC 173-400-110(4)(b)(vi) that says, <ul style="list-style-type: none"> <li>• “not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC;”;</li> </ul> The part of 400-110 (4)(e)(iii) that says, <ul style="list-style-type: none"> <li>• “where toxic air pollutants as defined in chapter 173-460 WAC are not emitted”;</li> </ul> The part of 400-110(4)(f)(i) that says, <ul style="list-style-type: none"> <li>• “that are not toxic air pollutants listed in chapter 173-460 WAC”;</li> </ul> The part of 400-110 (4)(h)(xviii) that says, <ul style="list-style-type: none"> <li>• “, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted”;</li> </ul> The part of 400-110 (4)(h)(xxxiii) that says, <ul style="list-style-type: none"> <li>• “where no toxic air pollutants as listed under chapter 173-460 WAC are emitted”;</li> </ul> The part of 400-110(4)(h)(xxxiv) that says, <ul style="list-style-type: none"> <li>• “, or ≤1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC”;</li> </ul> The part of 400-110(4)(h)(xxxv) that says, <ul style="list-style-type: none"> <li>• “or ≤ % (by weight) toxic air pollutants”;</li> </ul> The part of 400-110(4)(h)(xxxvi) that says, <ul style="list-style-type: none"> <li>• “or ≤1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC”;</li> </ul> 400-110(4)(h)(xl), second sentence; The last row of the table in 173-400-110(5)(b) regarding exemption levels for Toxic Air Pollutants.
173-400-111 ....	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	07/01/16	Except: 173-400-111(3)(h); The part of 173-400-111(8)(a)(v) that says, <ul style="list-style-type: none"> <li>• “and 173-460-040.”; 173-400-111(9).</li> </ul>
173-400-112 ....	Requirements for New Sources in Nonattainment Areas—Review for Compliance with Regulations.	12/29/12	
173-400-113 ....	New Sources in Attainment or Unclassifiable Areas—Review for Compliance with Regulations.	12/29/12	Except: 173-400-113(3), second sentence.
173-400-117 ....	Special Protection Requirements for Federal Class I Areas.	12/29/12	
173-400-118 ....	Designation of Class I, II, and III Areas.	12/29/12	
173-400-131 ....	Issuance of Emission Reduction Credits.	4/1/11	
173-400-136 ....	Use of Emission Reduction Credits (ERC).	4/1/11	
173-400-151 ....	Retrofit Requirements for Visibility Protection.	2/10/05	

TABLE 2—UPDATED WASHINGTON DEPARTMENT OF ECOLOGY REGULATIONS TO APPLY WITHIN YRCAA’S JURISDICTION—Continued

State citation	Title/subject	State effective date	Explanations
173–400–171 ....	Public Notice and Opportunity for Public Comment.	9/16/18	Except: The part of 173–400–171(3)(b) that says, <ul style="list-style-type: none"> <li>• “or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173–460 WAC”;</li> </ul> 173–400–171(3)(o); 173–400–171(12).
173–400–200 ....	Creditable Stack Height and Dispersion Techniques.	2/10/05	
173–400–560 ....	General Order of Approval.	12/29/12	Except: The part of 173–400–560(1)(f) that says, “173–460 WAC”.
173–400–800 ....	Major Stationary Source and Major Modification in a Nonattainment Area.	4/1/11	EPA did not review WAC 173–400–800 through 860 for consistency with the August 24, 2016 PM <sub>2.5</sub> implementation rule (81 FR 58010); nor does YRCAA have an obligation to submit rule revisions to address the 2016 PM <sub>2.5</sub> implementation rule at this time.
173–400–810 ....	Major Stationary Source and Major Modification Definitions.	07/01/16	
173–400–820 ....	Determining if a New Stationary Source or Modification to a Stationary Source is Subject to these Requirements.	12/29/12	
173–400–830 ....	Permitting Requirements.	07/01/16	
173–400–840 ....	Emission Offset Requirements.	07/01/16	
173–400–850 ....	Actual Emissions Plantwide Applicability Limitation (PAL).	07/01/16	
173–400–860 ....	Public Involvement Procedures.	4/1/11	

### B. Approved But Not Incorporated by Reference Regulations

In addition to the regulations proposed for approval and incorporation by reference above in this document, 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. We are proposing to include YRCAA Regulation 1, sections 1.05, 2.01, 2.02, 2.05, 5.01, 5.02, and 5.03 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

YRCAA and Ecology’s October 14, 2021 submittal included a request to remove several obsolete provisions from the SIP and to remove other provisions that are not required SIP elements under CAA section 110. As previously discussed, YRCAA and Ecology requested that the EPA: Remove former section 1.03 which was replaced by Appendix A; remove former section 2.03 which was replaced by the provisions of section 1.07; remove former section 2.04 which was replaced by the provisions of section 1.06; remove former section 5.12 which was replaced by section 3.08 and WAC 173–400–040; remove former sections 13.01, 13.02, and 13.03 which were replaced by the provisions of section 2.02; remove former section 12.01 which was replaced by section 2.03 and is not a required SIP element; and remove former sections 3.11, 4.02, 4.03, 5.06, 5.07, 5.08, and 5.11 in order to rely on Chapter 173–400 WAC. We are also

proposing to remove from 40 CFR 52.2470(c) the former sections 2.02, 2.05, 3.01, 3.02, 3.03, 3.04, 8.01, 8.02, 8.03, 8.04, and 8.05, related to local agency enforcement and other general authority, now consolidated in sections 1.05, 2.01, 2.02, 2.05, 5.01, 5.02, and 5.03 and proposed for approval in 40 CFR 52.2470(e), *EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures*, as approved but not incorporated by reference regulatory provisions. Lastly, we are proposing to remove the former section 5.10 *Sensitive Area Designation*, which allowed YRCAA to designate sensitive areas based on a consideration of present and predicted ambient air quality, population density and trends, distance of sources from public roads, recreational areas and areas of human habitation, topographic and meteorological conditions, and other pertinent variables. YRCAA has never used this authority and eliminated it from Regulation 1 effective May 1, 2000. We are also proposing to remove from

the SIP Chapter 173–400 WAC provisions approved by the EPA on June 2, 1995 (60 FR 28726) that we are proposing to replace with the local agency corollaries discussed above. These provisions are WAC 173–400–010 (replaced by section 1.03), 173–400–091 (replaced by section 4.03), and 173–400–100 (replaced by section 4.01).

#### D. Scope of Proposed Action

This proposed revision to the SIP applies specifically to the YRCAA jurisdiction as described in the SIP at 40 CFR 52.2470(c)—Table 10. As discussed in our October 3, 2014 action approving the general provisions of Chapter 173–400 WAC, local air agency jurisdiction in Washington is generally defined on a geographic basis; however, there are exceptions (79 FR 59653, at page 59654). By statute, YRCAA does not have authority for sources under the jurisdiction of the 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, YRCAA 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 and EFSEC also retain statewide, direct jurisdiction for issuing Prevention of Significant Deterioration (PSD) permits. Therefore, the EPA is not approving into 40 CFR 52.2470(c)—Table 10 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 173–400–750, which the EPA has already approved as applying statewide under 40 CFR 52.2470(c)—Tables 2 and 3.

As described in an April 29, 2015 final action approving revisions to the Washington SIP, 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 (80 FR 23721). However, for facilities subject to major nonattainment new source review (NSR) under the applicability provisions of WAC 173–400–800, we are proposing that YRCAA would be responsible for implementing those parts of WAC 173–400–117 as they relate to major nonattainment NSR permits. See 80 FR 23726. 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 YRCAA's jurisdiction.

With respect to the nonattainment NSR permitting program for major stationary sources, the EPA approved WAC 173–400–800 through 173–400–860 for Ecology's direct permitting jurisdiction on November 7, 2014 (79 FR 59653), with minor revisions to reflect updated federal citations on October 6, 2016 (81 FR 69385). In connection with our November 7, 2014 approval, we reviewed WAC 173–400–800 through 173–400–860 pursuant to the federal regulatory requirements in existence at that time and discussed the fact that the EPA's 2008 PM<sub>2.5</sub> New Source Review Rule (73 FR 28321, May 16, 2008) had been remanded to the EPA by the U.S. Court of Appeals for the District of Columbia Circuit. See 79 FR 43345, 43347 (July 25, 2014) (proposed action); 79 FR 59653 (final action). EPA's 2008 PM<sub>2.5</sub> New Source Review Rule has since been replaced by a revised implementation rule published August 24, 2016, which imposed additional NSR requirements for PM<sub>2.5</sub> nonattainment areas (81 FR 58010). Because there are no designated nonattainment areas within YRCAA's jurisdiction for any criteria pollutant, including PM<sub>2.5</sub>, the EPA did not review WAC 173–400–800 through 173–400–860 for consistency with the newly revised PM<sub>2.5</sub> implementation rule; nor does Ecology or YRCAA have an obligation to submit rule revisions to address the 2016 PM<sub>2.5</sub> implementation rule at this time. We also 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 173–400–860. We are therefore proposing to approve WAC 173–400–800 through 173–400–860 in YRCAA's jurisdiction as meeting the current major nonattainment NSR requirements for all criteria pollutants with respect to the current area designations and classifications in the YRCAA jurisdiction. New nonattainment designations trigger nonattainment NSR SIP revisions, among other area planning requirements.

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

#### V. Incorporation by Reference

In this document, the EPA is proposing to include in a final 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 IV.A. *Regulations to Approve and Incorporate by Reference into the SIP* of this document. The EPA is also proposing to remove from the incorporation by reference the regulations discussed in section IV.C. *Regulations to Remove from the SIP* of this document. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### VI. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the Clean Air Act; 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 proposed action would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA provided an opportunity to request consultation to the Confederated Tribes and Bands of the Yakama Nation in a letter dated April 5, 2021.

#### 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 1, 2021.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 2021-26437 Filed 12-6-21; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2020-0698; FRL-9215-01-R5]

#### Air Plan Approval; Wisconsin; Serious Plan Elements for the Wisconsin Portion of Chicago Nonattainment Area for the 2008 Ozone Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP) to meet the volatile organic compound (VOC) and nitrogen oxides (NO<sub>x</sub>) reasonably available control technology (RACT), clean-fuel vehicle programs (CFVP), and the enhanced monitoring of ozone and ozone precursors (EMP) requirements of the Clean Air Act (CAA) in the

Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin nonattainment area (Chicago area) for the 2008 ozone National Ambient Air Quality Standards (NAAQS or standards). EPA is proposing to approve this SIP revision pursuant to section 110 and part D of the requirements of the CAA and EPA's regulations, because it satisfies the above requirements for an area which is classified as serious nonattainment for the 2008 ozone NAAQS. Other serious elements will be addressed in a separate action.

**DATES:** Comments must be received on or before January 6, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2020-0698 at <https://www.regulations.gov>, or via email to [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18)), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, [leslie.michael@epa.gov](mailto:leslie.michael@epa.gov). The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we," "us," or "our" is used, we mean

EPA. This supplementary information section is arranged as follows:

#### I. What is the background for this action?

##### A. Background on the 2008 Ozone Standard

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm) (73 FR 16436). Promulgation of a revised NAAQS triggers a requirement for EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standard. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation. Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent 3 years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.

Areas that EPA designates nonattainment for the ozone NAAQS are subject to certain requirements, including the general nonattainment area planning requirements of CAA section 172 and the ozone-specific nonattainment planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, CAA section 182(a) details that a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources in the area, and implement a nonattainment new source review (NSR) program for the relevant ozone NAAQS. For moderate areas, the SIP requirements are found in CAA section 182(b), a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit an Reasonable Further Progress (RFP) plan, the requirement to adopt and implement certain emissions controls, such as RACT and Inspection and Maintenance (I/M), and the requirement for greater emissions offsets for new or modified major stationary sources under the state's nonattainment NSR program. For serious nonattainment areas, the SIP requirements are found in CAA section