

proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, Dated August 27, 2009 and effective September 15, 2009, is amended as follows:

*Paragraph 2004 Jet Routes.*

\* \* \* \* \*

**J-32 [Modified]**

From Oakland, CA, via Sacramento, CA; Mustang, NV; Lovelock, NV; Battle Mountain, NV; Malad City, ID; Boysen Reservoir, WY; Crazy Woman, WY; Dupree, SD; Aberdeen, SD; to Duluth, MN.

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**J-38 [Modified]**

From Duluth, MN; Green Bay, WI; to Peck, MI.

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**J-538 [Modified]**

From Sioux Narrows, ON; Duluth, MN; Dells, WI; to Badger, WI. The airspace within Canada is excluded.

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Issued in Washington, DC, on December 2, 2009.

**Kenneth L. McElroy,**

*Acting Manager, Airspace & Rules Group.*

[FR Doc. E9–29365 Filed 12–8–09; 8:45 am]

**BILLING CODE 4910–13–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R09–OAR–2009–0711; FRL–9090–3]

**Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO<sub>x</sub>) emissions from solid fuel fired boilers, steam generators and process heaters. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by January 8, 2010.

**ADDRESSES:** Submit comments, identified by docket number [EPA–R09–OAR–2009–0711], by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov>

[www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Idalia Perez, EPA Region IX, (415) 972–3248, [perez.idalia@epa.gov](mailto:perez.idalia@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

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**I. The State’s Submittal**

*A. What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board.

*B. Are there other versions of this rule?*

We approved an earlier version of Rule 4352 into the SIP on February 11,

**TABLE 1—SUBMITTED RULE**

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD .....	4352	Solid Fuel Fired Boilers, Steam Generators and Process Heaters ..	05/18/06	10/05/06

On 10/24/06, EPA determined that the submittal for SJVAPCD Rule 4352 met the completeness criteria in 40 CFR part

51 Appendix V, which must be met before formal EPA review.

1999 (64 FR 6803). We published a direct final approval of revisions to this rule, along with a parallel proposal, on May 30, 2007 (72 FR 29886). We received adverse comments and withdrew the direct final approval of Rule 4352 on July 30, 2007 (72 FR 41450). Because we are repropounding today an alternative action on Rule 4352, we are not addressing comments or taking further action on the parallel proposal published on May 30, 2007 (72 FR 29901).

### C. What is the purpose of the submitted rule revision?

NO<sub>x</sub> emissions help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO<sub>x</sub> emissions. Rule 4352 limits NO<sub>x</sub> and carbon monoxide (CO) emissions from solid fuel fired boilers, steam generators and process heaters. SJVAPCD amended the rule to broaden its applicability and to strengthen the emission limits for NO<sub>x</sub>. EPA's technical support document (TSD) has more information about this rule.

## II. EPA's Evaluation and Action

### A. How is EPA evaluating the rule?

Generally, NO<sub>x</sub> SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each major source of NO<sub>x</sub> emissions in nonattainment areas classified as moderate or above (see sections 182(b)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The SJVAPCD regulates an ozone nonattainment area classified as extreme (1-hour standard) and serious (8-hour standard) (see 40 CFR part 81), so Rule 4352 must satisfy RACT requirements. Rule 4352 must also require the use of advanced control technologies to control NO<sub>x</sub> emission from this source category (see section 182(e)(3)).

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498, April 16, 1992 (the General Preamble); 57 FR 18070, April 28, 1992 (Appendices).

2. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of

Title I; Proposed Rule," 57 FR 55620, November 25, 1992 (the NO<sub>x</sub> Supplement).

3. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

4. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

5. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters," CARB, July 18, 1991.

6. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Industrial/Commercial/Institutional (ICI) Boilers," US EPA, 453/R-94-022, March 1994.

7. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Utility Boilers," U.S. EPA, 453/R-94-023, March 1994.

### B. Does the rule meet the evaluation criteria?

SJVAPCD's revisions to Rule 4352 improve the SIP by expanding the rule's applicability provisions and establishing more stringent NO<sub>x</sub> emission limits. The rule is largely consistent with CAA requirements and EPA policy regarding enforceability and SIP relaxations. Rule 4352 also requires the use of advanced control technologies to control NO<sub>x</sub> emissions from this source category. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

### C. What is the rule deficiency?

The following provision does not satisfy the requirements of section 110 and part D of the Act and prevents full approval of the SIP revision.

1. Section 5.1 of the Rule establishes the emission limits. With the exception of the NO<sub>x</sub> emission limit for biomass fuel-fired units, SJVAPCD has not adequately demonstrated that the NO<sub>x</sub> emission limits (i.e., NO<sub>x</sub> limits for units burning municipal solid waste or other solid fuels, such as coal) satisfy RACT requirements. As explained further in the TSD for this proposed action, EPA's 1994 Alternative Control Techniques Document for NO<sub>x</sub> emissions from ICI Boilers contains lower emission ranges for such boilers. Source-specific information from the SJVAPCD also indicate that emission limits lower than those in Rule 4352 are reasonably achievable.

### D. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

### E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the disapproval. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the 2-year clock for the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the SJVAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

## III. Statutory and Executive Order Reviews

### A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses,

small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

#### *D. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132

requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

#### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

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

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: November 19, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E9–29351 Filed 12–8–09; 8:45 am]

**BILLING CODE 6560–50–P**