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 19985, 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 those requirements would be inconsistent with the CAA; and
• Does not provide 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 12831 (59 FR 17929, April 11, 1994); it is not subject to requirements of Executive Order 13132; it does not establish any limit of specific numerical quantity; it is not subject to Executive Order 13211; it is not an economically significant regulatory action; it is not a significant regulatory action; it will not significantly or uniquely affect a small entity; it will not have federalism implications; it will not have implications for federalism under section 6 of Executive Order 13132; it will not have disproportionate human health or environmental effects; it is not subject to requirements of Executive Order 12898; it will not create a financial or regulatory burden on state, local, or tribal governments; and it will not affect small government entities.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52
Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.


Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

2. In § 52.1170 the table in paragraph (e) is amended by adding a new entry for “1997 Annual Fine Particulate Matter 2005 Base Year Emissions Inventory” at the end of the table to read as follows:

§ 52.1170 Identification of plan.
   * * * * *
   (e) * * * *

1997 Annual Fine Particulate Matter 2005 Base Year Emissions Inventory.

Detroit–Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

<table>
<thead>
<tr>
<th>Name of nonregulatory SIP provision</th>
<th>Applicable geographic or nonattainment area</th>
<th>State submittal date</th>
<th>EPA approval date</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997 Annual Fine Particulate Matter 2005 Base Year Emissions Inventory.</td>
<td>Detroit–Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).</td>
<td>6/13/08</td>
<td>11/6/12 [INSERT CITATION OF PUBLICATION].</td>
<td>* * * * *</td>
</tr>
</tbody>
</table>

SUMMARY: EPA is approving revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the Federal Register on April 26, 2012 and concerns oxides of nitrogen (NOX) from solid fuel fired boilers. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on December 6, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0266 for this action. Generally, documents in the docket for this action are available electronically at http://www.regulations.gov or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at http://www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (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 Pérez, EPA Region IX, (415) 972–3248, perez.idalia@epa.gov.
We proposed to approve this rule based on our conclusion that it complies with the relevant CAA requirements. Our proposed rule and Technical Support Document (TSD) contain more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA’s proposed action provided a 30-day public comment period. During this period, we received comments from the following party.


The comments and our responses are summarized below.

Comment #1: Earthjustice stated that these revisions are an improvement over prior versions of this rule.

Response #1: No response needed.

Comment #2: Earthjustice disagreed with EPA’s proposal to approve the NOx emissions limit in Rule 4352 for municipal solid waste (MSW) fired units as RACT. Earthjustice provided several arguments in support of its objection to EPA’s proposal, each of which we address following separate comment summaries below.

Comment #2.a: Earthjustice stated that the New Jersey Department of Environmental Protection (NJDEP) has set NOx emissions limits for MSW-fired boilers at 150 ppmv at 7% O2 (approximately 142 ppm at 12% CO2).

Quoting from a SIP submission from NJDEP, Earthjustice asserted that NJDEP established this limit based on “the capability of existing selective non-catalytic reduction (SNCR) emission controls to reduce emissions more than are now being achieved.” The commenter stated that the District’s unsupported assertion that it is impossible to meet a limit lower than 165 ppmv at 12% CO2 is simply false.

Response #2.a: We disagree with the commenter’s suggestion that the NOx emissions limits established in NJDEP’s rule generally represent NOx RACT for existing MSW-fired boilers equipped with SNCR controls. As the commenter correctly notes, under Title 7, Chapter 27, Subchapter 19, Section 12 of the New Jersey Administrative Code (N.J.A.C. 7:27–19.12), NJDEP limits NOx emissions from MSW combustors to 150 ppmv at 7% O2 averaged over 24 hours (approximately 142 ppm at 12% CO2). In lieu of complying with this emissions limit, however, the rule allows an owner or operator of a MSW incinerator to comply with an alternative emission limit or facility-specific NOx control plan upon receipt of written approval from NJDEP, pursuant to Section 13 of the rule (N.J.A.C. 7:27–19.13).

TABLE 1

<table>
<thead>
<tr>
<th>Facility</th>
<th>Emission limit (ppm at 7% O2)</th>
<th>Emission limit (approximate ppm at 12% CO2)</th>
<th>Averaging time (hours)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Essex 2</td>
<td>300</td>
<td>285</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>155</td>
<td>147</td>
<td>24</td>
</tr>
<tr>
<td>Warren 3</td>
<td>300</td>
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<td>3</td>
</tr>
<tr>
<td></td>
<td>205</td>
<td>195</td>
<td>24</td>
</tr>
</tbody>
</table>


2 See Air Pollution Control Operating Permit, Permit Activity No. BOP090002, Covanta Essex Co. (Essex PTO) at pg. 57 of 95.

3 See Air Pollution Control Operating Permit, Permit Activity No. BOP090002, Covanta Warren Energy Resource Co. LP (Warren PTO) at pp. 57 and 60 of 101.
TABLE 1—Continued

<table>
<thead>
<tr>
<th>Facility</th>
<th>Emission limit (ppm at 7% O₂)</th>
<th>Emission limit (approximate ppm at 12% CO₂)</th>
<th>Averaging time (hours)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union</td>
<td>225</td>
<td>214</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>180</td>
<td>171</td>
<td>24</td>
</tr>
<tr>
<td>Gloucester</td>
<td>350</td>
<td>333</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>150</td>
<td>143</td>
<td>24</td>
</tr>
<tr>
<td>Camden</td>
<td>300</td>
<td>285</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>150</td>
<td>143</td>
<td>24</td>
</tr>
</tbody>
</table>

Of the three New Jersey facilities that have obtained permit limits exceeding the 24-hour NOₓ limit of 150 ppm (at 7% O₂) in NJDEP’s rule (Essex, Warren, and Union), two facilities (Warren and Union) have permit limits that also exceed the 24-hour NOₓ limit of 165 ppm (at 12% CO₂) in SJVUAPCD’s Rule 4352. See Table 1. The remaining two facilities, which are subject to the 150 ppm limit in NJDEP’s rule (Gloucester and Camden), are both equipped with SNCR using urea injection as a NOₓ control technique. See Gloucester PTO at pp. 45–46 of 106; Camden PTO at pg. 183 (of electronic file). Both of these facilities became subject to the 24-hour NOₓ limit of 150 ppm (at 7% O₂) in N.J.A.C. 7:27–19.12 effective May 1, 2011. See Gloucester PTO at pp. 38 of 106; Camden PTO at pg. 34 of 99. Notably, for the Camden facility, the 150 ppm limit applied “on and after May 1, 2011, if compliance is achieved by installing a new NOₓ air pollution control system on an existing MSW incinerator or by physically modifying an existing MSW incinerator.” Camden PTO at pg. 34 of 99. The Gloucester and Camden facilities are the only MSW incinerators we know of that are subject to the 24-hour NOₓ limit of 150 ppm (at 7% O₂) in N.J.A.C. 7:27–19.12.

Only one existing facility in the SJV (Covanta Stanislaus, Inc.) currently operates MSW-fired boilers subject to SJVUAPCD’s Rule 4352. The two MSW-fired boilers at the Covanta Stanislaus facility are equipped with SCNR using ammonia injection systems, instead of urea injection systems, for NOₓ control. See Facility-wide Permit to Operate for Covanta Stanislaus, Inc., San Joaquin Valley Air Pollution Control District, Permit Unit: N–2073–1–10 (expiration date 10/31/2016), “Equipment Description” (Stanislaus PTO). Although ammonia and urea injection both serve as reducing agents for NOₓ emissions in combination with SNCR control systems, these control methods require operation at different temperature windows and generally are not interchangeable without facility retrofits. See Alternative Control Techniques Document—NOₓ Emissions from Industrial/Commercial/Institutional (ICI) Boilers, U.S. EPA 453/R–94–022 (March 1994) (1994 ACT) at sections 5.5.1.1 ("Ammonia-based SNCR") and 5.5.1.2 ("Urea-based SNCR"). For example, the optimum reaction temperature range for the reduction of NOₓ by ammonia is 870°C to 1,100°C, while the optimum range for the reduction of NOₓ by urea is 900°C to 1,150°C, and ammonia can be injected both in aqueous solution or anhydrous form while urea may only be injected in aqueous form. Id. These technological distinctions between ammonia-based SNCR and urea-based SNCR highlight uncertainties about whether the controls implemented by the Gloucester and Camden incinerators in New Jersey (i.e., urea-based SNCR) are technologically and economically feasible for implementation at the one existing MSW-fueled facility in SJV.

Additionally, according to information submitted by SJVUAPCD at EPA’s request, four of the five MSW incinerators subject to the NJDEP rule have equipment that differs significantly from the equipment at the Covanta Stanislaus facility in SJV. See emails dated September 4, 2012 and September 11, 2012, from Nichole Corless (SJVUAPCD) to Idalia Perez (EPA Region 9), with attachments. Specifically, SJVUAPCD states that the Covanta Stanislaus facility is configured with stoker grates whereas the New Jersey MSW incinerators have reciprocating, horizontal, and roller grates, which enable them to meet a slightly lower NOₓ limit. Id. These technological distinctions raise additional questions about whether the controls implemented by the New Jersey facilities are feasible for implementation in SJV. Moreover, the fact that both the Gloucester and Camden incinerators in New Jersey became subject to the 150 ppm limit in N.J.A.C. 7:27–19.12 only as of May 1, 2011, and in Camden’s case only if the facility made physical modifications to, or installed new air pollution control equipment on, the existing MSW incinerator, further highlights uncertainties about whether the chosen control methods at these two facilities are “reasonably available” for implementation at existing MSW-fired boilers in SJV.

Finally, information submitted by the SJVUAPCD indicates that retrofits to existing SNCR systems to achieve additional NOₓ reductions are not cost-effective in light of the relatively insignificant difference between the NOₓ limit in NJDEP’s rule (150 ppm at 7% O₂, or approximately 142 ppm at 12% CO₂, 24-hour average) and the limit in SJVUAPCD’s Rule 4352 (165 ppm at 12% CO₂, 24-hour average). Specifically, with respect to staged combustion retrofits to an ammonia-based SNCR control system, SJVUAPCD submitted information indicating that the cost per ton of reductions in NOₓ emissions from 165 to 142 ppm at 12% CO₂ would be $27,650/ton. See email dated September 4, 2012, from Nichole Corless (SJVUAPCD) to Idalia Perez (EPA Region 9), with attachment. Further taking into account certain operational conditions at the Covanta Stanislaus facility which indicate that the limit in NJDEP’s rule (150 ppm at 7% O₂) would equate to approximately 148 ppm (rather than 142 ppm) at 12% CO₂, the cost per ton of NOₓ emission reductions from 165 ppm to 148 ppm at 12% CO₂ would be $37,404/ton. See id. These costs exceed the levels generally

4 See Air Pollution Control Operating Permit, Permit Activity No. BOP086001, Covanta Union (Union PTO) at pp. 56 and 57 of 90.

6 See Air Pollution Control Operating Permit, Permit Activity No. BOP088002, Camden Cnty Energy Recovery Assoc LP (Camden PTO) at pp. 34 and 66 of 99.
considered to be “reasonable” within the meaning of RACT.

In sum, the information before us raises significant questions about the technical and economic feasibility of achieving a 24-hour NOx emission limit of 150 ppm at 7% O2 (approximately 142 ppm at 12% CO2) at existing MSW-fired boilers equipped with ammonia-based SNCR in the SJV, and the commenter has provided little information to substantiate its claim in this regard. Absent specific information to support a conclusion that further NOx controls are “reasonably available” for implementation at existing MSW-fired boilers in the SJV, we find that the 24-hour NOx emission limit of 165 ppm at 12% CO2 in SJVUAPCD’s Rule 4352 represents current RACT for these units.7

**Comment #2.b:** Earthjustice asserted that the District has not adequately analyzed and considered the feasibility of either injecting more ammonia or adding more nozzles to existing SNCR controls to meet a lower NOx emissions limit. The commenter stated that according to the NJDEP State Implementation Plan (SIP) Revision for the Attainment and Maintenance of the Fine Particulate Matter (PM2.5) National Ambient Air Quality Standard (NJDEP 2009 PM2.5 SIP) submitted to EPA in 2009, 11 regulated units at 4 facilities in New Jersey would meet the lower NOx emissions limit in N.J.A.C. 7:27–19.12 by injecting more ammonia or adding more nozzles to existing SNCR controls. The commenter stated that “technical analysis of these demonstrated options must be conducted before EPA can accept ammonia slip as an excuse for rejecting tighter SNCR limits.”

**Response #2.b:** We have generally evaluated the technical feasibility of injecting more ammonia or adding nozzles to existing SNCR controls but do not have sufficient information to conclude that these control methods represent RACT for existing MSW-fired boilers in SJV at this time. According to information submitted by SJVUAPCD at our request, the orientation of the nozzles in the combustion gas stream has a much greater impact on the resulting NOx emissions than the number of nozzles in the system, and the Covanta Stanislaus facility’s nozzles have already been optimized based on the “temperature window where SNCR works to reduce NOx effectively.” See email dated September 4, 2012, from Nichole Corless (SJVUAPCD) to Idalia Perez (EPA Region 9), with attachments. SJVUAPCD also stated that the amount of ammonia injected into the flue gas at Covanta Stanislaus is closely controlled to maximize NOx reductions and to prevent excessive ammonia slip, and that increases in ammonia injection would “result in negligible NOx reductions and would exit the system and cause a detached plume,” causing violations of permit conditions regarding visible emissions, ammonia slip, and condensable particulate matter. Id. (citing continuous emissions monitoring data submitted by Covanta Stanislaus to support these conclusions).

EPA’s Alternative Control Techniques document for NOx emissions from Industrial/Commercial/Institutional Boilers (1994 ACT) supports the general conclusion that simply injecting more ammonia or adding nozzles will not necessarily reduce NOx emissions in an ammonia-based SNCR system. The 1994 ACT describes the process in an ammonia-based SNCR system as follows:

In this process, aqueous or anhydrous ammonia is vaporized and injected into the flue gas through wall-mounted nozzles at a location selected for optimum reaction temperature and residence time. The optimum reaction temperature range for this process is 870 to 1,100 °C (1,600 to 2,000 °F). * * * At temperatures above 1,100 °C (2,000 °F), ammonia injection becomes counterproductive, as additional NOx formation. Below 870 °C (1,600 °F), the reaction rate drops and undesired amounts of ammonia are carried out in the flue gas. Unreacted ammonia is commonly referred to as ammonia slip, breakthrough, or carryover. The amount of ammonia slip also depends in part on the amount of ammonia injected. Although the chemical reaction requires one mole of NH3 for each mole of NO, the NH3/NOx ratio used is usually greater than 1 to avoid an undesired reaction which results in formation of NO. * * * Achievable NOx reductions for an individual boiler depend on the flue gas temperature, the residence time at that temperature, the initial NOx concentration, the NH3/NOx ratio, the excess oxygen level, and the degree of ammonia/flue gas mixing. Also, stratification of both temperature and NOx in the flue gas can affect the performance of the SNCR control.

The optimum placement of SNCR injectors requires a detailed mapping of the temperature profile in the convective passes of the boiler, because of the narrow temperature window. 1994 ACT at Section 5.5.1.1.

Thus, even assuming it is technologically feasible to inject more ammonia and/or to install additional ammonia injection nozzles, it is not clear that these methods would further reduce NOx emissions in an ammonia-based SNCR system, and technical information indicates that such methods could instead lead to increased ammonia slip if not carefully adjusted to account for the specific temperature profile, NH3/NOx ratio, oxygen levels, degree of ammonia/flue gas mixing, and other factors specific to the particular boiler and control system.

As the commenter correctly notes, Appendix C of the NJDEP 2009 PM2.5 SIP states that “the NJDEP anticipates that the facilities will decrease their emissions due to optimizing their existing NOx control systems (i.e., either injecting more ammonia or adding more nozzles).” See NJDEP 2009 PM2.5 SIP, App. C., at 5. This statement alone, however, does not establish that the NOx emission limit in N.J.A.C. 7:27–19.12 (150 ppm at 3% O2) represents RACT for existing MSW-fueled boilers. As discussed above in Response 2.a, four of the five MSW incinerators subject to the NJDEP rule have equipment configurations that appear to differ significantly from the Covanta Stanislaus facility, and NJDEP has approved alternate, higher NOx limits for three of the five subject sources based on the agency’s assessment of source-specific technological and/or economic factors. Other than referencing statements of general intent in a New Jersey SIP submission, the commenter provides no technological or economic information to support its assertion that existing MSW-fired boilers, either generally or in SJV specifically, are capable of meeting a 24-hour NOx emission limit of 150 ppm at 3% O2 (142 ppm of at 12% CO2) by the application of control technology that is reasonably available considering technological and economic feasibility.

**Comment #2.c:** Earthjustice stated that the New Jersey rule, along with data presented in EPA’s TSD for the proposed rule, “highlights the need for further analysis of potential NOx controls by the District.” Earthjustice stated that information available in EPA’s 1994 ACT, which shows NOx emissions from MSW-fired boilers with SNCR controls ranging from 35 to 167 ppmv at 12% CO2, calls into question the 165 to 210 ppmv at 12% CO2 range provided in the District’s 2011 Staff Report and places the District’s NOx emissions limit of 165 ppmv at 12% CO2 at the highest end of the range. Earthjustice also asserted that “[g]iven that the Valley is in attainment of

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7 The commenter states that “the District’s unsupported assertion that it is impossible to meet a limit lower than 165 ppmv at 12% CO2 is simply false,” but this assertion mischaracterizes the District’s position, as test data for Covanta Stanislaus submitted by the District clearly show average NOx emission levels below the 165 ppm level in Rule 4352. See TSD at 6. An emission limit of 165 ppm at 12% CO2 ensures that the source is obligated to continually operate its emission control system while leaving the facility a small compliance buffer to account for occasional short-term variabilities inherent in its process. Id.
the PM$_{2.5}$ NAAQS and is in extreme nonattainment of the 1-hour and 8-hour ozone NAAQS. EPA must require the District to conduct further analysis and ensure that MSW-fired boilers meet the lowest emission limit that can be achieved through the application of RACT.

Response #2.c: First, with respect to the commenter’s assertions about the NJDEP rule (N.J.A.C. 7:27–19.12), we addressed these comments above in Response #2.a. Second, with respect to the commenter’s assertion about data presented in EPA’s TSD, although we agree with the commenter’s observation that the NO$_x$ emission limit in Rule 4352 (165 ppmv at 12% CO$_2$) is at the highest end of the range of NO$_x$ levels identified in EPA’s 1994 ACT for MSW-fired boilers operating SNCR controls with ammonia or urea injection, we disagree with the assertion that this necessarily compels further evaluation of the NO$_x$ limit in Rule 4352.

Municipal solid waste varies widely in composition including durable goods, non-durable goods, demolition and construction wastes, containers and packaging, food wastes and yard trimmings, and/or miscellaneous inorganic wastes—and the exact makeup of MSW at a particular facility may vary both seasonally and geographically. See 1994 ACT at Section 3.4.3. Variability in MSW can affect emissions both due to differences in the availability of fuel-bound nitrogen as well as differences in the heat content of the fuel, which can affect its combustion characteristics. Given the broad technical diversity of existing MSW-fired boilers and their varying fuel compositions, the NO$_x$ emission level that one MSW-fired unit achieves by the application of reasonably available controls may not necessarily be achievable for others using similar controls. Even where boiler type, control technology, and fuel type are the same, emission levels may differ significantly from boiler to boiler depending on a number of site-specific factors, including furnace dimensions and operating characteristics, design and condition of burner controls, design and condition of stream control systems, and fan capacity. See, for example, 1994 ACT at Appendix B (page B-21), showing achievable NO$_x$ emission levels ranging from 44 to 210 ppm at 3% O$_2$ for MSW boilers equipped with SNCR.

ACT documents describe available control techniques and their cost effectiveness but do not define prescriptive RACT levels as EPA’s Control Techniques Guidelins (CTGs) do. The wide range of emission levels provided in the 1994 ACT for MSW-fired boilers equipped with SNCR and using ammonia or urea injection as a control technique (35 to 167 ppmv at 12% CO$_2$) reflects the significant variation in emission levels that may result from site-specific technological considerations and fuel compositions at different MSW-fired units. Notably, the NO$_x$ emission ranges provided in Appendix B of the 1994 ACT do not identify applicable averaging periods and therefore may not be directly comparable to the 24-hour NO$_x$ emission limit in Rule 4352. See 1994 ACT at Appendix B.

EPA has evaluated the control techniques and applicable permit conditions for the two MSW incinerators in New Jersey that are currently subject to the 24-hour NO$_x$ emission limit of 150 ppm (at 3% O$_2$) in N.J.A.C. 7:27–19.12 (Gloucester and Camden) and concluded that technical distinctions between these facilities and the Covanta Stanislaus facility in SJV raise significant questions about the technological and economic feasibility of those same emission control methods at existing MSW-fired boilers in the SJV. See Response #2.a. We do not currently have information sufficient to support a conclusion that existing MSW-fired boilers using ammonia-based SNCR systems, either generally or specifically in the SJV, are capable of meeting a 24-hour NO$_x$ emission limit of 150 ppm at 3% O$_2$ (142 ppmv at 12% CO$_2$) by the application of control technology that is reasonably available considering technological and economic feasibility.

Finally, with respect to the commenter’s statement about the SJV area’s air quality designations for the PM$_{2.5}$ and ozone National Ambient Air Quality Standards (NAAQS), we note that attainment status designations are not relevant to our evaluation of Rule 4352 for compliance with the technology-based RACT control requirement in CAA section 182(b)(2). The RACT requirement in CAA section 182 is a control mandate that applies independent of the emission reductions needed for attainment of the NAAQS. See, e.g., EPA’s Proposed Rule to Implement the 8-Hour Ozone [NAAQS], 68 FR 32802, 32837 (June 2, 2003) (explaining that “[u]nder subpart 2, RACT requirements for ozone nonattainment areas apply independent of the emissions reductions needed to attain the standard”). We note, however, that the general requirement in CAA section 172(c)(1) to adopt all “reasonably available control measures” (RACTM) continues to apply in the SJV area for purposes of attaining the ozone and PM$_{2.5}$ NAAQS (see, e.g., 40 CFR 51.912(d) and 51.1010). Given the severity of the ozone and PM$_{2.5}$ pollution problems in the SJV and the NO$_x$ and PM$_{2.5}$ emission reduction commitments contained in the SIP-approved plans for attainment of the 1997 PM$_{2.5}$ and 1997 8-hour ozone standards in the SJV, we encourage the District to further evaluate potential NO$_x$ and PM control options at its earliest opportunity to determine whether additional controls for existing MSW-fired boilers may be reasonably available for implementation in the Valley.

Comment #2: Earthjustice asserted that EPA should urge the District to reevaluate the startup and shutdown provisions in Rule 4352 as the rule allows units to emit excess emissions for far longer than necessary. In support of this assertion, the commenter referred to rules adopted by the Placer County Air Pollution Control District (PCAPCD), Yolo Solano Air Quality Management District (YSAQMD) and Sacramento Metropolitan Air Quality Management District (SMAQMD), each of which contain shorter time periods for startup and shutdown operations. Citing a 1999 EPA policy document providing that startup and shutdown periods should be limited “to the maximum degree practicable,” the commenter asserted that the District had neglected to evaluate the possibility of requiring shorter startup and shutdown times under Rule 4352 for solid fuel-fired boilers.

Response #3: We disagree with the commenter’s assertion that the startup and shutdown provisions in Rule 4352 are deficient. EPA policy regarding excess emissions during malfunctions, startup, shutdown, and maintenance provides that for some source categories, “given the types of control technologies available, there may exist short periods of emissions during startup and shutdown when, despite best efforts regarding planning, design, and operating procedures, the otherwise applicable emission limitation cannot be met.” Thus, with limited exceptions, it may be appropriate in consultation with EPA to create “narrowly-tailored SIP revisions” that take these technological limitations into account and state that the otherwise applicable emissions limitations do not apply during these periods. See Memorandum dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert

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8 See, e.g., SIP-approved NO$_x$ emission reduction commitments in 40 CFR 52.220(c)[(358)(ii)(B)(2)] and 52.220(c)[(358)(ii)(B)(4)], and 52.220(c)[(397)(ii)(B)(2)].
In sum, the start-up and shutdown provisions in SJVUAPCD’s Rule 4352 are narrowly-tailored to address the technological limitations of emissions controls at solid-fueled boilers and require, unlike the other California district rules cited by the commenter, that source owners/operators continue to operate emission control systems and to minimize emissions to the extent technologically feasible, even during start-up or shutdown periods. We conclude that these provisions in Rule 4352 are consistent with EPA’s 1999 SSM policy and appropriate for SIP approval for this particular source category. We agree with the commenter, however, that the District should reevaluate these provisions at its earliest opportunity to determine whether shorter limits on the duration of startup and shutdown periods may be feasible for certain types of solid fuel-fired boilers covered by the rule, and to consider establishing limits on the frequency of such events, to ensure that emissions during start-up and shutdown events are minimized to the maximum extent practicable. We also encourage the District to carefully review the CEMS data required by section 5.4 of Rule 4352 (monitoring provisions), in particular NOx emissions data during start-up and shutdown periods, to ensure that owners/operators of solid fuel-fired boilers are in fact operating emission control systems and minimizing emissions insofar as technologically feasible during start-up or shutdown as required by Rule 4352, section 5.3.3.

III. EPA Action

For the reasons provided in our proposed rule and action and pursuant to section 110(k)(3) of the Act, EPA is fully approving Rule 4352 into the San Joaquin Valley portion of the California SIP. This final approval of Rule 4352 satisfies California’s obligation to implement RACT under CAA section 182(b)(2) for solid fuel-fired boilers in the SJV for the 1-hour ozone and 1997 8-hour ozone NAAQS and thereby terminates all CAA sanctions clocks and Federal Implementation Plan (FIP) clocks associated with this source category. See 75 FR 60623 (October 1, 2010) (final limited approval and disapproval of SJV RACT SIP); 77 FR 1417 (January 10, 2012) (final partial approval and disapproval of SJV RACT SIP); and 77 FR 24857 (April 26, 2012) ( interim final determination to stay and defer sanctions).

IV. 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 Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 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 requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
• Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 13, 2012.

Jared Blumenfeld,
Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(411) (i)(B)(4) to read as follows:

§ 52.220 Identification of plan.

* * * * *
(c) * * * *(411) * * * *(i) * * * *
(B) * * * *

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[FR Doc. 2012–26779 Filed 11–5–12; 8:45 am]
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GENERAL SERVICES ADMINISTRATION

41 CFR Part 303–70

Federal Travel Regulation (FTR); Payment of Expenses Connected With the Death of Certain Employees

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA has adopted as final, an interim rule amending the Federal Travel Regulation (FTR) to establish policy for the transportation of the immediate family, household goods, personal effects, and one privately owned vehicle of a covered employee whose death occurred as a result of personal injury sustained while in the performance of the employee’s duty as defined by the agency.

DATES: Effective date: November 6, 2012.

Applicability date: This final rule applies to travel relating to employees who died on or after June 9, 2010.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (MVCB), 1275 First Street NE, Washington, DC 20417, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Rick Miller, Office of Government-wide Policy, Travel and Relocation Policy Division, at (202) 501–3822 or email at rodney.miller@gsa.gov. Please cite FTR Amendment 2012–07, FTR Case 2011–308.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707, the Administrator of General Services is authorized to prescribe necessary regulations to implement laws regarding Federal employees who travel in the performance of official business away from their official stations. Similarly, 5 U.S.C. 5738 mandates that the Administrator of General Services prescribe regulations relating to official relocation. In addition, the Presidential Memorandum, “Delegation Under Section 2(a) of the Special Agent Samuel Hicks Families of Fallen Heroes Act,” dated September 12, 2011, published in the Federal Register on September 15, 2011 (76 FR 57621), delegates to the Administrator of