

2. Add temporary § 165.T11–121 to read as follows: § 165.T11–121 Safety Zone; Desert Storm Exhibition Run; Lake Havasu City, Lake Havasu, AZ.

(a) *Location.* All waters of Thompson Bay on the Colorado River and land adjacent to those waters enclosed by the following coordinates 34°27.81N, 114°20.90W; 34°26.24N, 114°19.28W; 34°26.49N, 114°18.99W.

(b) *Enforcement Period.* This safety zone will be enforced from 8 a.m. to 5:45 p.m. on April 25, 2009 and April 26, 2009. If the need for the safety zone ends before the scheduled termination times, the captain of the port will cease enforcement of this safety zone.

(c) *Definitions.* (1) *Designated representative.* Any Commissioned, Warrant, or Petty Officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port San Diego.

(2) *Coast Guard Patrol Commander.* A Commissioned, Warrant, or Petty Officer who will be designated by the Captain of the Port San Diego.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited unless authorized by the Captain of the Port, or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Coast Guard Patrol Commander. The Patrol Commander may be contacted via VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port or the designated representative.

(4) Upon being hailed by the Coast Guard Patrol personnel, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: November 21, 2008.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.*

[FR Doc. E8–29579 Filed 12–12–08; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 72, 73, 74, 77, and 78

[EPA–HQ–OAR–2008–0774; FRL–8750–7

RIN 2060–AP35

### Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to reaffirm the promulgation of certain revisions of the Acid Rain Program rules in order to prevent disruption of the program, which has achieved significant, cost-effective reductions in sulfur dioxide (SO<sub>2</sub>) emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the **Federal Register** notices that also finalized the Clean Air Interstate Rule (CAIR) and the final Federal Implementation Plans for CAIR (CAIR FIPs). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision vacating and remanding CAIR and the CAIR FIPs. EPA and other parties have petitioned for rehearing, and the Court has not yet issued a mandate in the case. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is proposing to reaffirm—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of these revisions in order to remove any uncertainty about their regulatory status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of

the Acid Rain Program, and the rest of them streamline and clarify requirements of the program.

**DATES:** Written comments must be received by January 29, 2009. Any request for a public hearing must be made by telephone or by e-mail to the person in the **FOR FURTHER INFORMATION CONTACT** section of this preamble by December 22, 2008. If such a telephone or e-mail request for a public hearing is received by that date, a public hearing will be held on December 30, 2008 in Washington, DC. For additional information on a public hearing and comments, see the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections of this preamble.

**ADDRESSES:** Submit any comments, identified by Docket ID EPA–HQ–OAR–2008–0774 (which incorporates by reference the dockets for CAIR and the CAIR FIPs, i.e., Docket ID Nos. EPA–HQ–OAR–2003–0053 and EPA–HQ–OAR–2004–0076), by mail to Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Any comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, Mailcode: 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9151, e-mail at [alpern.dwight@epa.gov](mailto:alpern.dwight@epa.gov). Electronic copies of this document can be accessed through the EPA Web site at: <http://epa.gov/airmarkets>.

### SUPPLEMENTARY INFORMATION:

*Regulated Entities.* Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry .....	221112 and others .....	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be

regulated by this action. This table lists the types of entities, of which EPA is now aware, that could potentially be

regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether

your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Administrative Procedures Used in This Action.* This notice proposes to reaffirm the promulgation of certain revisions, of the Acid Rain Program rules, that were previously promulgated and have been in effect since mid-2006 and to withdraw the interim final rule reaffirming the promulgation of these same revisions. EPA is publishing at the same time a direct final rule, reaffirming the promulgation of these revisions of the Acid Rain Program rules and withdrawing the interim final rule reaffirming the promulgation of these same revisions, in the “Rules and Regulations” section of this **Federal Register** because the Agency views this as a noncontroversial action and anticipates no adverse comment. EPA is also publishing at the same time the interim final rule (referenced above), reaffirming the promulgation of these revisions, in the “Rules and Regulations” section of this **Federal Register**. The effectiveness of the interim final rule is immediate upon the date of promulgation in the **Federal Register** and continues for 12 months from that date, unless the interim final rule is withdrawn on an earlier date by the direct final rule or, if the direct final rule itself is withdrawn, the final rule, addressing these rule revisions.

EPA has explained its reasons for this action in the preamble of the direct final rule and, in more detail, in the preamble of the interim final rule.

If EPA receives no adverse comment during the comment period, the Agency will not take further action on this proposed rule. If EPA receives any adverse comment during the comment period, the Agency will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the direct final rule is being withdrawn and will not take effect and that the interim final rule is not being withdrawn. EPA will address timely comments on the direct final rule in any subsequent final rule based on this proposed rule.

EPA does not intend to institute a second comment period on this action. Any parties interested in commenting must do so during the comment period established in this notice.

*Considerations in Preparing Comments for EPA.* For information on

submitting Confidential Business Information and tips on preparing your comments, see the **SUPPLEMENTARY INFORMATION** section of the direct final rule located in the rules section of this **Federal Register**.

*Public Hearing.* If requested, EPA will hold a public hearing on this proposed rule. EPA will hold a hearing only if the person in the **FOR FURTHER INFORMATION CONTACT** section of this preamble receives by telephone or e-mail by December 22, 2008 a request for a public hearing in order to present oral testimony on this proposed rule. If a public hearing is held on this proposed rule, the hearing will be held on December 30, 2008. Any person who plans to attend the public hearing should visit the EPA’s Web site at <http://epa.gov/airmarkets> or contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this preamble to learn if a hearing will be held and, if so, what will be the location and time for the hearing. Because the hearing will be held at a U.S. Government facility, everyone planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room.

The public hearing, if held, will be limited to comments on this proposed rule. Each commenter’s oral testimony will be limited to 5 minutes. EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD-ROM) or in paper copy. The public hearing schedule, including the list of speakers, will be posted on EPA’s Web site at <http://epa.gov/airmarkets>. Verbatim transcripts and written statements will be included in the rulemaking docket.

The public hearing, if held, will provide interested parties the opportunity to present data, views, or arguments concerning this proposed rule. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Any oral comments and supporting information presented at the public hearing will be given the same weight as any other written statements and supporting information submitted during the comment period.

*Outline.* The following outline is provided to aid in locating information in this preamble.

- I. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed
- II. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act

- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

## I. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed

The Acid Rain Program rule revisions whose promulgation EPA proposes to reaffirm in this notice are described in the preamble of the direct final rule, and in more detail in the preamble of the interim final rule, published in the **Federal Register** simultaneously with this notice. The reasons why the rule revisions are appropriate for the Acid Rain Program, why EPA maintains that it should remove any uncertainty about the legal status of the rule revisions, and therefore why EPA is issuing this proposed rule are also set forth in the preambles of the direct final rule and the interim final rule. As discussed above, EPA also proposes to withdraw the interim final rule as of effective date of any final rule issued as a result of this proposed rule.

## II. Statutory and Executive Order Reviews

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

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to review under the Executive Order. In this action, EPA is simply proposing to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and are currently in effect and have been since mid-2006.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued, does not change the existing requirements in 40 CFR parts 72, 73, 74, 77, and 78, and thus does not change the existing information collection burden. Moreover, EPA maintains that the effect of these revisions when they were first

promulgated was, if anything, to reduce somewhat the information collection burden on regulated sources, e.g., by requiring compliance with the allowance-holding requirement at a source, rather than unit, level (thereby removing the need to transfer allowances among units at the same source) and by making other changes to the rules in place when the rule revisions were originally promulgated (such as removing the requirement for submission of an annual compliance certification report). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements in the existing rules under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060-0258. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the SBA's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial

number of small entities if the rule relieves regulatory burden or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule does not change the existing Acid Rain Program rules and thus the economic impact of those rules on small entities. The rule simply proposes to reaffirm the promulgation of existing Acid Rain Program rule revisions that have been in effect since mid-2006. Moreover, the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the economic impact of the then-existing rules on all regulated sources and thus on small entities that might be, or own, regulated sources. For example, by requiring compliance on a source, rather than a unit, basis, the revisions reduced the potential for excess emissions penalties due to an inadvertent error, e.g., in the owner's distribution of allowances among the units at a source that would cause one unit to have more than enough allowances to cover emissions and another unit to not have enough allowances to cover emission. As a further example, the revisions removed some requirements (e.g., the required submission of an annual compliance certification report) and thereby removed some costs of compliance for all regulated sources.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective,

or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not change the existing Acid Rain Program rules and therefore does not result in any additional expenditures to State, local, and tribal governments or to the private sector. The rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the expenditures of State, local, and tribal governments and the private sector under the then-existing Acid Rain Program rules. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

#### E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255 (Aug. 10, 1999)), 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."

This rule does not have federalism implications. It 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. This rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that

were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not have substantial direct effects on States, the relationship between the national government and the States, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249 (Nov. 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 rule does not have tribal implications, as specified in Executive Order 13175. This rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did 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.

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

Executive Order 13045, entitled "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885 (Apr. 23, 1997)), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on 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 the Executive Order because it is not a significant regulatory action under Executive Order 12866 and is not based on health or safety risks. This rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions implemented certain requirements of the Acid Rain Program that were not on based on health or safety risks.

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

This rule is not subject to Executive Order 13211, entitled "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 Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not address the use of any technical standards. Thus, this rule is not subject to the NTTAA.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their

mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of protection provided to human health or the environment, but simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not change the level of protection provided to human health or the environment.

**List of Subjects in 40 CFR Parts 72, 73, 74, 77, and 78**

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 5, 2008.

**Stephen L. Johnson,**  
Administrator.

[FR Doc. E8-29386 Filed 12-12-08; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 239 and 258**

[EPA-R07-RCRA-2008-0849; FRL-8751-9]

**Adequacy of Iowa Municipal Solid Waste Landfill Permit Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a modification to Iowa's approved municipal solid waste landfill (MSWLF) program. The modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its State law. The Region is also proposing to approve updates to Iowa's approved MSWLF program for adding financial assurance mechanisms for local governments, adding the financial test and corporate guarantee to financial assurance mechanisms, adding a technical amendment to solid waste location restrictions for airport safety,