reporting requirements at municipal waste combustors. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittals as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 4, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, at (617) 918–1048, or by e-mail at: Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 10, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–22186 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0031; FRL–6432–7]

Approval and Promulgation of State Implementation Plans; Colorado; Revisions to Opacity and Sulfur Dioxide Requirements

AGENCY: Environmental Protection Agency (EPA).2

ACTION: Proposed rule.

SUMMARY: On May 27, 1998, the Governor of Colorado submitted revisions to the State Implementation Plan (SIP). Specifically, the State submitted revisions to Colorado Regulation No. 1 to provide coal-fired electric utility boilers with certain exemptions from the State's pre-existing limitations on opacity and sulfur dioxide (SO_2) emissions during periods of startup, shutdown, and upset. The EPA is proposing to disapprove these revisions to the Colorado SIP because the revisions are not consistent with the Clean Air Act (Act) and applicable Federal requirements. The effect of this disapproval will be that the previous version of Colorado Regulation No. 1 (which did not contain any exemptions from the SO_2 emission limitations and which generally provided for a 30% opacity limit during periods of startup, as well as fire building, cleaning of fire boxes, soot blowing, process modification, or adjustment of control equipment) will remain part of the Federally enforceable SIP.2

DATES: Written comments must be received on or before October 4, 1999.2

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.2

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.2

SUPPLEMENTARY INFORMATION:

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I. Background of State Submittal

On May 27, 1998, the Governor of Colorado submitted revisions to the Colorado SIP. The SIP submittal consisted of revisions to Colorado Regulation No. 1 to provide exemptions from the existing limitations on opacity and SO_2 emissions for coal-fired electric utility boilers during periods of startup, shutdown, and upset.

These revisions were adopted by the Colorado Air Quality Control Commission (AQCC) on December 23, 1996. The revisions became effective at the State level on March 2, 1997 for most sources. However, for coal-fired electric utility boilers located within the Denver Metro PM–10 non-attainment area, the AQCC specified that the provisions will not become State-effective until EPA issues a final rule adopting the revisions to Regulation No. 1 as a permanent part of the SIP.

The following explains in detail the revisions to Regulation No. 1 that the Governor submitted on May 27, 1998:

A. Revisions to Opacity Standards

Prior to these revisions to Regulation No. 1, sections II.A.1. and 4. of Regulation No. 1 generally required all sources to meet a 20% opacity limit, except during periods of fire building, cleaning of fire boxes, soot blowing, startup, process modification, or adjustment of control equipment. During these periods, a 30% opacity limit applied, except the regulation allowed one 6-minute period in excess of 30% opacity in any sixty consecutive minutes. (In both the revised Regulation No. 1 and the pre-existing Regulation No. 1, compliance with the opacity limits is based on a six-minute average.) The revisions to Regulation No. 1 that the Governor submitted on May 27, 1998 amended these opacity requirements for coal-fired electric utility boilers. Specifically, the State

added a provision in section II.A.10. of Regulation No. 1 governing opacity at coal-fired electric utility boilers during startup, shutdown, and upset. (Colorado defines ''upset conditions'' in its Common Provisions Regulation as ''an unpredictable failure of air pollution control or process equipment which results in the violation of emission control regulations and which is not due to poor maintenance, improper or careless operations, or is otherwise preventable through exercise of reasonable care.'') Section II.A.10. provides that, during periods of startup, shutdown, and upset, owners and operators of coal-fired electric utility boilers must, to the extent practicable, maintain and operate each such source including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. This provision also states that determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the State, including monitoring results, opacity observations, review of operating and maintenance procedures, operator training, and inspection of the source.

Another provision in section II.A.10.c. of Regulation No. 1 states that a source is not being maintained and operated in accordance with good air pollution control practice for minimizing emissions if the source's exceedance time (excluding exceedance time related to (1) significant planned maintenance outage (PMO) startups, and (2) emissions associated with periods that the unit is not ''on line,'' where ''on line'' is defined as fuel being fed to the boilers and the fans are on) expressed as a percentage of total operating time, calculated on a quarterly basis, exceeds the following ''exceedance percentage time allowance:'' (1) for sources using baghouses for the control of particulate matter, 0.8%; and (2) for sources using electrostatic precipitators (ESPs) for the control of particulate matter, 2% through March 31, 2000 and 1.5% beginning April 1, 2000. In enforcing this exceedance percentage time allowance, section II.A.10.e. of Regulation No. 1 provides that the State may consider each day on which one or more excess emission periods occur during the remainder of a given quarter, following the day on which the exceedance percentage time allowance is exceeded in that quarter, to be a separate day of violation for the purposes of assessing any penalties that may be allowed.

Last, a provision was added in section II.A.10.d. of Regulation No. 3 stating that no specific opacity limits shall be in effect for coal-fired electric utility boilers for the startup period following a significant PMO, provided the following conditions are met:

1. Written notification is provided to the State no less than 30 days prior to shutting the unit down for the PMO. The notification must include a plan for minimizing emissions during the startup and an estimation of the period that the control equipment will not be operated while the boiler is started up;

2. Throughout the startup following the PMO, the operator shall, to the extent practicable, maintain and operate each source including the associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions; and

3. During any PMO startup, the source shall place any air pollution control equipment in service no later than the manufacturer's specifications allow.

Section II.A.10.d. also provides that significant PMO startups shall not exceed one event in any two consecutive years, and that a PMO startup shall ''not normally exceed 14 days in duration,'' although the State may extend this time period for good cause. Last, this provision defines startup for the purposes of significant PMOs to be the period of time beginning with the point of setting the unit into operation and ending with the points when: (1) the generator is synchronized and is operating at or greater than a specific unit's minimum load; (2) primary fuel is being burned and the burners are in service without stabilizing fuel being burned in the boiler; and (3) any air pollution control equipment has reached minimum normal operating design conditions consistent with manufacturer's specifications (as defined by temperature, on a unit-by-unit basis).

B. Revisions to SO2 Emission Limitations

Section VI. of Regulation No. 1 contains SO2 emission limitations for various source categories which vary depending on whether the source was issued an emission permit before August 1, 1977 (i.e., defined as an ''existing source'') or issued an emissions permit on or after August 1, 1977 (i.e., defined as a ''new source''). Before the revisions to Regulation No. 1 that the Governor submitted on May 27, 1998, section VI.B.4.a. of Regulation No. 1 required new coal-fired operations, including coal-fired steam generators, to meet the following SO2 emission limits:

(1) 1.2 pounds (lbs) SO2 per million British Thermal Units (BTU) of coal heat input for units converted from other fuels to coal and for units with a coal heat input of less than 250 million BTU per hour; and

(2) 0.4 lbs SO2 per million BTU coal heat input for units with a coal heat input of 250 million BTU per hour or greater.

There were no exemptions from these SO2 emission limits.

In the May 27, 1998 submittal, the State revised section VI.B.4.a. to add a new subsection (iv), which states that, during periods of startup, shutdown, and upset, owners and operators of coal-fired electric utility boilers must, to the extent practicable, maintain and operate each such source including associated air pollution control equipment in a manner consistent with good air pollution practice for minimizing emissions. This provision also states that determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the State, including monitoring results, opacity observations, review of operating and maintenance procedures, operator training and inspection of the source. The State also added a provision stating that, for those coal-fired electric utility boilers subject to 40 CFR part 60, subpart Da (i.e., those coal-fired electric utility boilers for which construction or modification commenced after September 18, 1978), the source is not being maintained and operated in accordance with good air pollution control practice for minimizing emissions if the source's exceedance time expressed as a percentage of total operating time, calculated on a quarterly basis, exceeds 1%.

Last, the State revised section VI.B.2. of Regulation No. 1. Section VI.B.2. of Regulation No. 1 previously specified a 3-hour averaging time for all new source emission standards for SO2. This section further stated that any 3-hour rolling average of emission rates which exceeded the emission standards in section VI.B. of Regulation No. 1 would be a violation of the State's regulation. The State added the phrase ''unless specified in a permit'' to the beginning of this section, in order to allow the State to use the permit process to specify an averaging time other than 3 hours for a specific source.

II. EPA's Analysis of State's Submittal

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act

provides that each revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

To entertain public comment on the revisions to Regulation No. 1 regarding coal-fired electric utility boilers, the Colorado AQCC held public hearings on December 19, 20, and 23, 1996. Following the public hearings, the regulation revisions were adopted by the AQCC. The Governor initially submitted the revisions to EPA for approval on October 31, 1997.

EPA found the initial SIP submittal incomplete and notified the State of such finding in a January 12, 1998 letter. EPA requested further information from the State pertaining to the AQCC's adoption of the Regulation No. 1 revisions, due to the fact that the Sierra Club and other plaintiffs had challenged the revisions in State court on the grounds that the AQCC had failed to follow applicable State law procedures in adopting the revisions. (See *Cunningham* v. *Colorado Air Quality Control Commission*, Denver District Court, Case No. 97 CV 1808).

On May 27, 1998, the Governor of Colorado resubmitted the revisions to Regulation No. 1 to EPA for approval. The resubmittal included a letter from the Colorado Attorney General's Office opining that the AQCC had followed applicable procedures in adopting the revisions. On August 7, 1998, the Denver District Court issued an Order Affirming Administrative Action that affirmed the AQCC's adoption of the revisions.

EPA did not issue a completeness or an incompleteness finding for the May 27, 1998 SIP submittal. Thus, pursuant to section 110(k)(1)(B), the May 27, 1998 submittal was deemed complete by operation of law on November 29, 1998 (i.e., six months from the date of receipt).

B. Analysis of State's Submittal

EPA has reviewed the State's May 1998 SIP submittal against the relevant requirements of the Act, Federal regulations, and EPA policy and guidance. EPA has identified several issues with the State's SIP revision, as follows:

1. It Does Not Appear the State Has Adequately Addressed the Requirements of Section 193 of the Act

For SIP provisions which EPA approved before November 15, 1990, section 193 prohibits SIP modifications applicable within a nonattainment area unless the modification insures equivalent or greater emissions reductions of the pollutant for which the area is nonattainment.

EPA approved the existing opacity and SO2 provisions in Regulation No. 1 as part of the SIP prior to the enactment of the 1990 amendments to the Act (i.e., prior to November 15, 1990). There are four coal-fired power plants in the Denver metro PM–10 nonattainment area that are affected by the State's revisions. The State's SIP revisions do not impact any other nonattainment area in Colorado because there are no affected coal-fired power plants in any of the State's other PM–10 nonattainment areas, and because the State does not have any SO2 nonattainment areas.

In the Denver metro PM–10 nonattainment area, SO2 emissions have been determined to contribute significantly to PM–10 exceedances (see section 189(e) of the Act and 58 FR 66331, December 20, 1993). However, the revisions to the SO2 requirements in Regulation No. 1 only impact coal-fired electric utility boilers which are subject to 40 CFR part 60, subpart Da, and there are no such coal-fired electric utility boilers located within the Denver metro PM–10 nonattainment area. Thus, the requirements of section 193 of the Act apply only to the State's changes to the opacity requirements in Regulation No. 1, as they impact the four coal-fired power plants in the Denver metro PM–10 nonattainment area.

The AQCC concluded that the revisions to Regulation No. 1 would result in at least equivalent emissions reductions as the pre-existing Regulation No. 1 provisions. In other words, the AQCC believed that the revisions did not represent a relaxation of the existing rule. Specifically, the AQCC's Statement of Basis states the following:

The regulatory change removing application of the 30% opacity limit appears on first impression to relax requirements for these units. However, by limiting the overall time during which the units may exceed the 20% opacity limit, the Commission believes this approach will result in at least the same levels of compliance with the opacity standard and will likely result in lower overall emissions.[1]

EPA does not believe the AQCC's conclusion is adequately supported. The Statement of Basis explains that the State's enforcement discretion has been exercised to effectively allow 5% noncompliance by electric power plants. It also states that ''substantial regulatory ambiguity'' in the opacity limitations that previously applied during startup and other periods led to lower compliance levels. Thus, the AQCC concluded that the revisions to Regulation No. 1 are substantially equivalent or better in their impact on emissions because a higher rate of compliance is expected under the revised Regulation No. 1.[2]

EPA does not agree that the State's enforcement practices under the previous version of Regulation No. 1 should be taken into account in determining the stringency of the previous version of the rule or in determining whether a SIP modification meets the requirements of section 193 of the Act. The language of Regulation No. 1, on its face, did not permit sources to exceed the applicable opacity limitations up to 5% of the time. Thus, the fact that the State used enforcement discretion in determining which types of violations to spend resources and time pursuing has no impact on whether EPA or citizens could enforce the requirements of Regulation No. 1 or whether sources were obligated to comply with those requirements on a continuous basis. In fact, a citizens group successfully enforced the opacity provisions of Regulation No. 1 for violations at a coal-fired power plant that complied with the opacity limitations of Regulation No. 1 more than 95% of the time. See *Sierra Club*

[1] The State's Statement of Basis is somewhat unclear regarding the reduced application of the 30% opacity standard and the baseline for analyzing whether the rule change represents a relaxation. The language of the revised Regulation No. 1 appears to be clear that the 30% opacity limit continues to apply to fire building, cleaning of fire boxes, soot blowing, process modification, or adjustment of control equipment (unless these activities occur during a significant PMO startup or a period when fuel is not being fed to the boiler). In its discussion of section 193 of the Act, the State does not draw this distinction. The State also fails to mention that, under the provisions of Regulation No. 1, sources were required to meet a 20% opacity limit during shutdown.

[2] In another part of the Statement of Basis, the AQCC concluded that ''the changes made in this rulemaking will not lead to increased emissions in amounts substantial enough to interfere with the State's programs to attain and maintain the National Ambient Air Quality Standards (NAAQS) or other federal requirements.'' Here, the AQCC appears to concede that increased emissions will result from the rule change.

v. *Public Service Company of Colorado*, 894 F. Supp. 1455 (D. Colo. 1995).

Application of the AQCC's rationale regarding enforcement discretion would lead to an odd result: States with the least robust enforcement programs could most easily meet section 193's equivalency requirements. EPA does not believe Congress intended such a result when it enacted section 193 of the Act.

Further, even though the revisions to Regulation No. 1 define when a coal-fired electric utility boiler is not complying with good air pollution control practices for minimizing emissions by specifying an exceedance percentage time allowance, there is nothing in the revisions that prevents the State from continuing to use enforcement discretion in implementing the new provisions. Thus, there is no guarantee that this new provision will be enforced any more stringently than the previous version of Regulation No. 1. In fact, section II.A.10.e. of Regulation No. 1 merely states that the State *may* assess penalties on a violation-per-day basis.

EPA also disagrees with the AQCC's assertion that the prior version of Regulation No. 1 was ambiguous. The AQCC does not explain what was ambiguous about the prior version of the regulation. EPA believes the previous version of Regulation No. 1 was clear in requiring a 20% opacity limit to be met at all times, except for periods of fire building, cleaning of fire boxes, soot blowing, startup, process modification, or adjustment of control equipment. During those periods, a 30% opacity limit applied, with one 6-minute period in excess of 30% opacity allowed in any sixty consecutive minutes. The only provision in the State's rules that explained when an exceedance would not be considered to be a violation of the rules was the State's upset provision in section II.E. of the Common Provisions Regulation, which provided that upset conditions (as defined in the Common Provisions Regulation) would not be considered to be a violation if certain notification requirements were met (and, presumably, if the upset met the State's definition—i.e., it was not due to poor maintenance, improper or careless operation, or was otherwise preventable through exercise of reasonable care).

EPA also believes the AQCC's analysis ignores critical features of the proposed revisions to Regulation No. 1. Specifically, the AQCC ignores the fact that, under the revisions to Regulation No. 1, exceedances of the exceedance percentage time allowance during startup, shutdown, or upset conditions would not be considered violations of the opacity limitation and would not be penalized for each 6-minute exceedance. Instead, exceedances of the exceedance percentage time allowance during startup, shutdown, or upset conditions would only be considered violations of the requirement for good air pollution control practice for minimizing emissions and would only be penalized on a one-violation-per-day basis. The prospect of fewer violations and lower penalties would reduce sources' incentive to keep their emissions low during startup, shutdown, and upset, and would likely lead to higher emissions of PM–10 under the revised rule than under the Federally approved rule.

Also, under the State's revisions, instead of being subject to a 20% opacity limit during shutdowns and a 30% opacity limit during startups, sources may emit up to 100% opacity during startup, shutdown, and upset conditions if, to the extent practicable, they exercised good air pollution control practice for minimizing emissions. These sources are potentially allowed up to 43.2 hours of 100% opacity in one calendar quarter, if equipped with ESPs, and up to 17.3 hours of 100% opacity in one calendar quarter, if equipped with baghouses, without being considered in violation of the good air pollution control practice standard.

In addition, the AQCC's analysis ignores the provision in the revised regulation that exempts significant PMO startups from the opacity limits. Under the revised Regulation No. 1, sources engaged in a significant PMO startup could potentially emit at 100% opacity for fourteen days or longer. Under the previous version of Regulation No. 1, emissions during a significant PMO startup would have been subject to a 30%, and sometimes to a 20%, opacity limit. It appears that the State's analysis fails to consider equivalency on a short-term basis, such as 24 hours, that is directly relevant to the National Ambient Air Quality Standards (NAAQS).

For the reasons stated, EPA does not believe the revisions to Regulation No. 1 will insure equivalent or greater reductions of PM–10 as required by section 193 of the Act. Thus, EPA does not believe it can approve the revisions.

2. It Does Not Appear the State Has Adequately Addressed the Requirements of Section 110(l) of the Act

Section 110(l) of the Act provides that EPA cannot approve a revision to a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. Section 110(l) applies to SIP revisions affecting both attainment or unclassifiable areas, as well as nonattainment areas. For attainment or unclassifiable areas, analysis of proposed changes under this provision should, among other things, focus on the 110(a)(1) requirement for maintenance of the NAAQS.

As discussed above, the State does not consider the revisions to Regulation No. 1 regarding coal-fired electric utility boilers to be a relaxation of the SIP, a conclusion with which EPA disagrees. However, the State's submittal did include a study commissioned by the Colorado Utilities Coalition for Clean Air regarding the ambient impacts during startup and shutdown at electric utility units, which the AQCC relied upon in its rulemaking.[3]

EPA has reviewed the study included in the SIP submittal and has found many flaws in the analysis. The study was based on startup and shutdown data from four coal-fired electric utility boilers (out of twenty-five in the entire State), but there was no information provided to explain why these four units were chosen or how they were representative of the potential ambient air issues from all of the twenty-five coal-fired electric utility boilers in the State. The modeling analysis projected ambient particulate matter impacts from each of the four units, in addition to background PM concentrations, that were less than the 24-hour PM–10 NAAQS. However, based on the information submitted, it is apparent that the modeling analysis did not follow the requirements contained in the EPA Guideline on Air Quality Models. (See 40 CFR part 51, appendix W).

The emissions used in the modeling demonstration did not capture the potentially most adverse emissions scenarios associated with startup and shutdown. For example, it appears that the modeling analysis was based on actual emissions from a sample start-up/shutdown sequence that was simply repeated in the model throughout the year. The EPA's Guideline on Air

[3] The study analyzed impacts on PM–10 and PM–2.5. The recent U.S. Court of Appeals decision in *American Trucking Associations, Inc.* v. *USEPA*, Nos. 97–1440 and 97–1441 (D.C. Cir., May 14, 1999) did not vacate the PM–2.5 standard promulgated on July 18, 1997. In any event, EPA is not relying on potential adverse impacts on PM–2.5 as a basis to disapprove the revisions to Regulation No. 1. The D.C. Circuit's decision had no impact on the pre-July 18, 1997 PM–10 standard. That standard remains in place in Colorado, and EPA has an ongoing responsibility under the Act to ensure the standard is attained and maintained.

Quality Models requires that, in testing for compliance with 24-hour standards, worst case hourly emission rates (from the test sequence) must be used in the model for every hour of the year. Also, the meteorological data and selection of modeling input options was problematic. It appears that only one year of National Weather Service meteorology data was used in the modeling analysis, while the EPA Modeling Guideline requires that five years of such data be used. If the additional four years of meteorology data had been used in the modeling, it is likely that more adverse dispersion situations and higher ambient impacts would have been predicted. Further, the modeling only analyzed whether emissions from one unit, considering background concentrations, would cause a violation of the NAAQS. The modeling did not analyze whether the emissions from one unit during startup or shutdown would contribute to a violation, considering emissions from other nearby sources in the area. (Each of the units modeled in the study is collocated with two to four other coal-fired electric utility boilers.)

In addition, the study only looked at particulate matter impacts, and it did not address the revisions to the SO2 limits whatsoever.

Thus, EPA believes the modeling analysis included in the SIP submittal cannot be relied upon because of its overall noncompliance with the EPA Guideline on Air Quality Models, nor can the Agency rely on it to conclude that the SIP revision will not interfere with attainment or maintenance of the NAAQS.

3. It Does Not Appear the State Has Addressed the Requirements of 40 CFR 51.166(a)(2)

40 CFR 51.166(a)(2) requires that, if a SIP revision would result in increased air quality deterioration over any baseline concentration, the SIP revision must include a demonstration that it will not cause or contribute to a violation of the applicable increment(s). The demonstration does not need to be done for those section 107 attainment/unclassifiable areas (as identified in 40 CFR part 81) where the minor source baseline date has not been triggered prior to submittal of the SIP revision, although the State is still required under 40 CFR 51.166(a)(4) to periodically review the adequacy of its plan to prevent significant deterioration of air quality.

According to EPA's prevention of significant deterioration (PSD) regulations, the ''baseline concentration'' represents the ambient concentration that exists in the baseline area at the time of the applicable minor source baseline date. The baseline concentration includes the actual emissions of sources in existence on the minor source baseline date, excluding (1) the actual emissions from any major stationary source on which construction occurred after the ''major source baseline date''—January 6, 1975 for sources of particulate matter and SO2; and (2) the actual emissions increases and decreases at any stationary source occurring after the minor source baseline date. (See 40 CFR 51.166(b)(13).) Thus, once the minor source baseline date is triggered for an area, any changes in emissions at any stationary source impact the available maximum increase allowed over the baseline concentration (i.e., the increment). In Colorado, the SO2 minor source baseline date was triggered Statewide as of October 12, 1977 and the particulate matter minor source baseline dates have been triggered for a large part of the State (each ''air quality control region'' in the State has a different minor source baseline date for particulate matter).

As discussed above, EPA believes the changes to the opacity provisions in Regulation No. 1 represent a relaxation from existing requirements that will allow increased emissions into the air. EPA also believes the revisions to the SO2 provisions are a relaxation that would allow more SO2 emissions into the air. Thus, in those parts of Colorado where the minor source baseline date has been triggered, this SIP revision would potentially allow increased deterioration over baseline concentration. As discussed above, the State did not consider the revised Regulation No. 1 to be a relaxation of existing emission limits. Thus, the State did not address the requirements of 40 CFR 51.166(a)(2). However, EPA believes this SIP revision would allow increased deterioration of air quality over the baseline concentration in some parts of the State and, therefore, a demonstration is required to show that the SIP revision will not cause or contribute to a violation of the applicable increment(s).

4. The SIP Revision Does Not Appear To Meet the Act's Requirements That SIP Measures Be Enforceable

Section 110(a)(2)(A) of the Act requires the SIP to include, among other things, ''*enforceable* emission limitations'' [emphasis added]. 40 CFR 51.281 further requires that SIPs must be ''adopted as rules and regulations enforceable by the State agency.'' On September 23, 1987, EPA issued a memorandum entitled ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency.'' This memo provided guidance on how to determine whether a rule or regulation was enforceable. This memo also directed the EPA Regional Offices to not approve SIPs or SIP revisions which fail to satisfy the enforceability criteria detailed in the September 23, 1987, memo. EPA has reviewed the revised Regulation No. 1 and believes that the revised rule does not meet the Act's requirement that SIP measures be enforceable as EPA has interpreted that requirement. EPA's reasoning is as follows:

(a) EPA reads the revisions to Regulation No. 1 as substituting the good air pollution control practice standard in section II.A.10. for the opacity limits specified in sections II.A.1. and 4. during startups, shutdowns, and upsets. In defining the ''exceedance percentage time allowance'' in section II.A.10., the State does not specify whether exceedances will be measured against the 20% opacity limit of section II.A.1., the 30% opacity limit of section II.A.4., or both. This lack of clarity undermines the enforceability of the regulation.

(b) The State's Regulation No. 1 revisions either fail to specify a test method for evaluating a source's performance against its exceedance percentage time allowance, or specify an inadequate test method. Section II.A.1. of Regulation No. 1 states that visible emissions shall be measured by EPA Method 9 (40 CFR part 60, appendix A) in all subsections of section II.A. and B. of Regulation No. 1, unless otherwise specified. Section II.A.10. does not specify any other method for measuring visible emissions for the purposes of determining whether a source has exceeded the exceedance allowance. If, as EPA suspects, the State intended continuous opacity monitoring (COM) data to be used to evaluate a source's performance against the exceedance percentage time allowance, the State needed to make this explicit in the regulation to ensure enforceability. In the alternative, EPA believes EPA Method 9 is inadequate to evaluate a source's performance against the exceedance percentage time allowance because Method 9 observations cannot be made on a continuous basis. The revised SO2 provisions in section VI.A.2. also do not specify any test method for determining whether or not a source has exceeded the SO2 exceedance allowance.

(c) Regulation No. 1 specifies that section II.A.10. governs opacity during startup, shutdown, and upset, but the

AQCC's Statement of Basis states that excess emissions due to fire building, process modification, and adjustment of control equipment will also be counted in determining compliance with the exceedance allowance. It is not clear from the actual language of the rule whether exceedances due to fire building, process modification, and adjustment of control equipment are to be counted in determining the number of exceedances in a given quarter. Thus, there is a potential inconsistency between the language of the rule and the State's intent. The enforceability of the State's intent, without clear rule language, is questionable.

(d) EPA's September 23, 1987, guidance memo states that there must be a clear, enforceable requirement that records be kept. While there is no specific provision requiring recordkeeping and reporting in section II.A.10. of Regulation No. 1, section IV.G. of Regulation No. 1 requires recordkeeping and reporting on a quarterly basis of periods of excess emissions for sources required to operate continuous emission monitoring systems for opacity and/or SO2 (which applies to most of the coal-fired electric utility boilers). However, Regulation No. 1 does not appear to require recordkeeping and reporting of total operating time on a quarterly basis. Without such information, it is not clear how the State could implement the exceedance percentage time allowance. Further, section IV.G. of Regulation No. 1 does not require the recordkeeping and reporting of the type of information that might be needed to determine (1) whether a source is being maintained and operated in accordance with good air pollution control practices for minimizing emissions, or (2) whether or not a source is engaged in a significant PMO startup.

(e) Significant PMO startups are not subject to an enforceable time limit. Specifically, section II.A.10.d.iii. states that a significant PMO startup ''shall not normally exceed 14 days in duration, but the (Colorado Air Pollution Control) Division may extend this period for good cause shown.'' This language constitutes a ''director's discretion'' provision that undermines the enforceability of the time limit and undercuts any benefit the time limit would have for protecting the NAAQS.

(f) For significant PMO startups, section II.A.10.d.i requires the source to submit to the Division a plan for minimizing emissions during the startup, but the revisions do not require the source to follow the plan. Thus, the plan is unenforceable.

(g) Section II.A.10.d.iii. describes the duration of significant PMO startups. The duration is defined according to various events that occur during the course of a startup, but it is not clear from the language of the regulation that these events are adequately defined or that the information needed to adequately define these events for enforcement purposes is or will be available. For example, this section of the regulation refers to a specific unit's minimum load. It is not clear what this means or whether it is a constant and well-understood value.

(h) In the Statement of Basis for the revisions to Regulation No. 1, the Commission states that the significant PMO startup exception ''is not intended to allow exclusion of excess emissions resulting from routine maintenance outages, such as annual replacement of standard equipment * * *.'' Instead, ''the Commission restricts the application of the planned maintenance outage exception to events requiring significant changes at the facility, such as replacement of major facility components or installation of new processes * * *.'' However, the language of the regulation does not restrict significant PMOs in this way: Section II.A.10.d describes a significant PMO as ''a scheduled, infrequent yet extended maintenance shutdown * * *.'' Thus, it does not appear that the restriction the AQCC intended is enforceable.

(i) The State revised section VI.B.2. of Regulation No. 1 to allow a permit to specify a different averaging time for SO2 limits than the 3-hour averaging time contained in the regulation. This revision would allow the State to change the Federally enforceable averaging time in the SIP without EPA approval or Federal notice and comment rulemaking. EPA is unwilling to approve such a director's discretion provision, because it undermines the enforceability of the regulatory limit and allows the State to change the SIP without meeting the Act's requirements for SIP revisions. EPA believes it is impossible to judge in advance whether the State's potential changes to averaging times under such an open-ended provision would be consistent with maintenance of the NAAQS. In addition, EPA generally cannot approve a SIP provision that would be inconsistent with the averaging time of the NAAQS the SIP provision is designed to protect. Thus, to ensure protection of the secondary SO2 NAAQS, EPA believes the averaging time must not be longer than three hours, and EPA cannot approve a discretionary provision in the SIP that might allow averaging times longer than three hours.

(j) Section VI.B.4.a.(iv) of Regulation No. 1 states that, during periods of startup, shutdown, and upset, owners and operators of coal-fired electric utility boilers shall maintain and operate such sources in accordance with good air pollution control practice for minimizing emissions. However, the regulation does not state that such sources are exempt from the SO2 emission limit during startup, shutdown, and upset. Thus, the regulation reads as if both the SO2 emission limit and the good air pollution control practice standard apply during startup, shutdown, and upset at coal-fired electric utility boilers. However, the AQCC's Statement of Basis strongly implies that the good air pollution control practice standard applies in place of the SO2 emission limitation. This discrepancy between the Statement of Basis and the regulation creates confusion and undermines the enforceability of the regulation.

In addition to the above issues, section II.A.10.e. of Regulation No. 1 states that, in enforcing the exceedance percentage time allowance for opacity, the State may consider each day on which one or more excess emission periods occur following the day on which the exceedance percentage time allowance is exceeded for that quarter to be a separate day of violation for the purposes of assessing any penalties that may be allowed. This is much less stringent than considering each six-minute average of excess emissions a separate violation, as was previously required under the State's Regulation No. 1. Thus, the compliance incentive during startup, shutdown, and upset will be substantially reduced. This will, in turn, reduce the effectiveness of the rule in controlling particulate emissions.

In summary, EPA does not believe that the revisions to Regulation No. 1 meet the Act's requirements that SIP measures be enforceable.

5. The SIP Revision Appears To Be Inconsistent With the Requirements of the Act Regarding Continuous Compliance

The Act requires continuous compliance with emission limitations to ensure continuous protection of public health and the environment. The exemptions the State has written into Regulation No. 1 eliminate the requirement in the SIP that coal-fired electric utility boilers comply with Regulation No. 1's opacity and SO2 limits on a continuous basis. Under the

State's revisions to Regulation No. 1, emissions during startup, shutdown, upset, significant PMO startups and certain other conditions are automatically exempted from the otherwise applicable opacity and SO2 limits, and are subject to no emission limit. Consistent with its interpretation that emission limits must be met continuously, EPA has interpreted the Act to not permit SIP revisions that automatically exempt sources from emission limits.

More specifically, section 110(a)(1) of the Act requires SIPs to provide for attainment and maintenance of the NAAQS. Because the NAAQS are health and welfare-based standards, Congress intended that they must be met continuously, not just intermittently. Accordingly, section 110(a)(2) of the Act requires SIPs to contain enforceable emission limitations, and section 302(k) of the Act defines ''emission limitations'' as a requirement ''which limits the quantity, rate, or concentration of emissions of air pollutants on a *continuous basis*'' [emphasis added].

EPA explained its interpretation of the term ''continuous compliance'' in a June 21, 1982 memorandum from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, to the Regional Air Division Directors. That guidance states that ''continuous compliance is essentially the avoidance of preventable excess emissions over time as a result of the proper design, operation, and maintenance of an air pollution source.'' The guidance also emphasizes that excess emissions resulting from malfunctions or other emergency situations must be minimized and terminated quickly.

On September 28, 1982 and February 15, 1983, EPA issued policy statements regarding exemptions from emission limitations during startup, shutdown, and malfunction, based on EPA's interpretation of the Act's requirements for continuous compliance and attainment and maintenance of the NAAQS.[4] For most situations, these policies indicate that all excess emissions must be considered violations, which may or may not be enforced based on the exercise of enforcement discretion. These policies also indicate that events like startup, shutdown, and maintenance are part of the normal operation of a source and should be accounted for in the planning, design, and implementation of operating procedures for the process and control equipment.

EPA realizes that a few sources cannot avoid short periods of excess emissions during startup and shutdown, despite careful and prudent planning and design. For these few sources, the February 15, 1983 policy states that excess emissions during these infrequent, short periods need not be treated as violations provided that the source adequately shows that the excess could not have been prevented through careful planning and design and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage. Similarly, excess emissions during periods of scheduled maintenance should be treated as a violation, unless a source can demonstrate that such emissions could not have been avoided through better scheduling for maintenance or through better operation and maintenance practices.

These policy statements are consistent with EPA's view that SIP limits must be met continuously because they are intended to protect the NAAQS; any exceptions should be narrowly drawn and clearly place the burden on the source to demonstrate that an exceedance was unavoidable. EPA believes the revisions to Regulation No. 1 are inconsistent with the Act's requirement for continuous compliance and attainment and maintenance of the NAAQS, and believes the revisions must be disapproved.

The revisions eliminate the requirement for coal-fired electric utility boilers to meet any opacity limit during periods of startup, shutdown, and upset. It appears the State intended to provide the same exemption for SO2 limits. Instead, during these periods, coal-fired electric utility boilers are only obligated to exercise good air pollution control practice for minimizing emissions.

As noted in the Background section, above, the revisions establish an ''exceedance percentage time allowance.'' The exceedance of this exceedance percentage time allowance in a quarter is considered a violation of the duty to exercise good air pollution control practice for minimizing emissions. However, it is not considered a violation of the underlying emission limit, and violations may only be penalized on a per-day basis.

With respect to SO2 limits, Regulation No. 1 does not specify how the State will treat exceedances of the exceedance allowance described in section VI.B.4.a.(iv)(B) of Regulation No. 1, but it appears the State intends to approach such exceedances in the same manner as exceedances of the opacity exceedance percentage time allowance.

In order to ensure continuous compliance with the SIP's opacity and SO2 limits, EPA believes it is essential that exceedances during startup, shutdown, and upsets be considered violations of such limits, that may only be excused in an enforcement action if the source properly demonstrates that the exceedances were unavoidable.

EPA has the same objection to the SIP revision's exemption of emissions during significant PMO startups and periods when fuel is not being fed to the boiler. For significant PMO startups, revised Regulation No. 1 requires sources to exercise good air pollution control practices for minimizing emissions but states that no opacity limit applies during these periods. As noted above, significant PMO startups may last 14 days or longer. For emissions during periods when fuel is not being fed to the boiler, the revisions do not appear to impose any emission limit or requirement on sources. These exemptions from the opacity limits are inconsistent with the Act's requirement for continuous compliance and attainment and maintenance of the NAAQS.

EPA does not believe the requirement for the use of good air pollution control practice for minimizing emissions during startups, shutdowns, malfunctions, and significant PMO startups is an adequate substitute for the opacity and SO2 limits. This provision in the revisions to Regulation No. 1 is not adequate to ensure continuous compliance as required by the Act.

First, the revisions to Regulation No. 1 do not require a source to show that the exceedance during startup, shutdown, or upset was unavoidable. In fact, the revisions do not even require a source to demonstrate that it has exercised good air pollution control practice for minimizing emissions. Instead, section II.A.10.b and section VI.B.4.a.(iv) provide that a determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Division. This appears to put no burden on the source to justify an exceedance and does not appear calculated to determine whether or not the exceedance could have been prevented through careful planning and design or whether bypassing of the control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage.

[4] See September 28, 1982 and February 15, 1983 Memorandums, both entitled ''Policy on Excess Emissions During Startup, Shutdown, and Malfunctions'', from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, to the Regional Administrators.

Second, the State's requirement that the source exercise good air pollution control practice only appears to apply during startup, shutdown, and malfunction. Clearly, a problem could arise during startup, shutdown, and malfunction that could have been prevented by careful planning, design, or implementation before the startup, shutdown or malfunction. Also, the Bennett memoranda describe good air pollution control practice for minimizing emissions as only one criterion to examine in evaluating exceedances, and indicate that good air pollution control practice for minimizing emissions should be exercised to the ''maximum extent practicable,'' not just to the ''extent practicable'' as the State provides.

Furthermore, according to the AQCC's Statement of Basis for this Regulation No. 1 revision, the exceedance percentage time allowance was adopted to provide more certainty for the State and for sources in enforcing the good air pollution control practice standard. Thus, the Statement of Basis and the language of the regulation itself (''exceedance percentage time *allowance*'') strongly imply that excess emissions during startup, shutdown, and upset will only be considered to be violations if the exceedance percentage time allowance is exceeded (although the Statement of Basis also states that the State is not precluded from taking enforcement action when the exceedance percentage time allowance has not been exceeded).

The State's rationale, in part, for revising the existing opacity and SO2 provisions in Regulation No. 1 during periods of startup, shutdown, and upset appears to have been to make the revised Regulation No. 1 more consistent with the requirements in EPA's New Source Performance Standards (NSPS) regarding startup, shutdown, and malfunction (see 40 CFR part 60, subparts D and Da). However, emission limitations and other control requirements of the NSPS were not designed to ensure compliance with the NAAQS or to meet other SIP requirements. Rather, the NSPS were designed to reflect best demonstrated technology (taking into account costs) for the affected sources. Further, because NSPS are based on the best system of emission reduction which ''the Administrator determines has been adequately demonstrated,'' EPA generally views the NSPS as the ''floor'' in determining the emissions control technology that is feasible for a source. Thus, the NSPS are intended to complement the SIP program, but do not necessarily satisfy the requirements of section 110(a)(1) of the Act, which requires control measures to provide for attainment and maintenance of the NAAQS, or of other sections of the Act related to SIP content.

In summary, EPA believes the revisions to Regulation No. 1 are not consistent with the Act because the revisions allow less than continuous compliance with SIP emission limits that are designed to attain and maintain the NAAQS without requiring sources to demonstrate that excess emissions could not have been prevented or avoided. The revisions to Regulation No. 1 significantly reduce the incentive for continuous compliance by sources.

6. EPA Invites Comment on Whether the SIP Revision Conflicts With EPA's Any Credible Evidence Rule

On February 24, 1997, EPA promulgated changes to Federal Regulations to clarify that any credible evidence can be used to demonstrate compliance or noncompliance with emission standards (see 62 FR 8314–8328). In that rulemaking, EPA revised the SIP requirements in 40 CFR 51.212 to state that the SIP ''must not preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.''

As discussed above, section II.A.1. of Regulation No. 1 states that visible emissions shall be measured by EPA Method 9 (40 CFR part 60, appendix A) ''in all subsections of section II.A and B of this regulation, unless otherwise specified.'' It is EPA's belief that this language does not preclude the use of other credible evidence or information to determine compliance with the opacity limits contained in Regulation No. 1, or to determine whether a source has exceeded the exceedance allowance specified in section II.A.10. of Regulation No. 1.

Recently, the United States District Court for the District of Colorado held that the language of Regulation No. 1 does not preclude the use of other credible evidence to show opacity violations, at least in citizens suits. *See Sierra Club* v. *Tri-State Generation and Transmission Association, Inc., et al.*, Order and Memorandum of Decision, Civil Action No. 96 N 2368, March 8, 1999, at 19, 20. However, it is not clear from the Court's opinion whether the Court was examining the language of the Regulation No. 1 revision or the Federally-approved version of Regulation No. 1. The revision to Regulation No. 1 adds the language ''unless otherwise specified'' to the end of the language that specifies Method 9 for measuring opacity. Also, it is not clear whether the Court would reach the same conclusion in an enforcement action brought by EPA or the State.

Thus, EPA invites comment on whether the language of section II.A.1. of Regulation No. 1 is consistent with the requirements of 40 CFR 51.212(c), and whether failure to comport with EPA's any credible evidence rule should be an additional basis for disapproving the revisions to Regulation No. 1.

For the reasons discussed above, EPA is proposing to disapprove Colorado's May 27, 1998 SIP submittal of revisions to Regulation No. 1. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Proposed Action

EPA is proposing to disapprove the revision to the Colorado SIP pertaining to the opacity and SO2 provisions in Regulation No. 1, which was submitted by the Governor of Colorado on May 27, 1998. The effect of this action, once final, will be that the pre-existing version of Regulation No. 1 will remain in effect as part of the Federally enforceable SIP and will continue to apply to opacity and SO2 emissions from coal-fired electric utility boilers.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's proposed rule would not create a mandate on State, local or tribal governments. The rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 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.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's proposed rule would not significantly or uniquely affect the communities of Indian tribal governments. EPA is proposing disapproval of a State rule revision, which will have no impact on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. 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 proposed rule would not have a significant impact on a substantial number of small entities because EPA's proposed disapproval of the State request under section 110 and subchapter I, part D of the Clean Air Act, would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the State submittal would not affect State-enforceability. Moreover, EPA's disapproval of the submittal would not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 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 disapproval action being 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. The proposed disapproval would not change existing requirements and would include no Federal mandate. If EPA were to disapprove the State's SIP submittal, pre-existing requirements would remain in place and State enforceability of the submittal would be unaffected. The action would impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this proposed action.

G. 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 proposed action. Today's proposed 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, and Sulfur oxides.

Dated: August 19, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6431–3]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Louisiana

AGENCY: Environmental Protection Agency (EPA).