Board. For further information, please see the information provided in the Direct Final action which is located in the Rules section of this **Federal Register**.

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

Dated: September 10, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–26069 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0031; FRL–6453–3]

Approval and Promulgation of State Implementation Plans; Colorado; Revisions to Opacity and Sulfur Dioxide Requirements; Supplemental Notice of Proposed Rulemaking; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking; extension of the comment period.

SUMMARY: On September 2, 1999, EPA proposed to disapprove a revision to the Colorado State Implementation Plan (SIP) regarding exemptions from opacity and sulfur dioxide (SO_2) emission limitations at coal-fired electric utility boilers (64 FR 48127). Specifically, on May 27, 1998, 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 SO_2 emissions during periods of startup, shutdown, and upset. EPA proposed to disapprove the SIP revision because EPA did not consider it to be consistent with the Clean Air Act (Act) and applicable Federal requirements. The comment period on the proposed disapproval closed October 4, 1999.

On September 17, 1999, EPA received a request to extend the public comment period on the proposed disapproval. In addition, on September 20, 1999, EPA issued an updated policy for SIP provisions that address excess emissions during malfunctions, startup, and shutdown. EPA has reviewed the State's May 27, 1998 SIP submittal in light of the September 20, 1999 policy, and EPA continues to believe that Colorado's SIP submittal is not approvable for all of the reasons outlined in the September 2, 1999 proposed rulemaking. However, in order to provide the public with an opportunity to comment on this topic, EPA is issuing this supplemental notice of proposed rulemaking. In addition, EPA is extending the public comment period on all of the issues raised in the September 2, 1999 proposed disapproval, in response to the request for extension received on September 17, 1999. Thus, the public will have thirty days from the publication of this document to submit comments both on EPA's September 2, 1999 proposed disapproval of Colorado's SIP submittal and this supplemental notice regarding the proposed disapproval.

DATES: Written comments must be received on or before November 8, 1999.

ADDRESSES: Mail written comments (in duplicate if possible) 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.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA, Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

On September 2, 1999, EPA proposed to disapprove a revision to Colorado's SIP that was submitted by the State on May 27, 1998. (See 64 FR 48127–48135.) 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. For further details on the State's regulation revision, please refer to Section I. of EPA's September 2, 1999 proposed rulemaking. (See 64 FR 48127–48128.)

The public comment period for EPA's September 2, 1999 proposed rulemaking ended on October 4, 1999. On September 17, 1999, EPA received a request to extend the public comment period.

On September 20, 1999, the Agency issued an update to its existing policy regarding excess emissions during startup, shutdown, and malfunctions. (See September 20, 1999 Memorandum entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and from Robert Perciasepe, Assistant Administrator for Air and Radiation, to the Regional Administrators.) EPA's pre-existing policy on excess emissions during startup, shutdown, and malfunctions was stated in two memos dated September 28, 1982 and February 15, 1983, 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. In EPA's September 2, 1999 proposal to disapprove Colorado's revisions to Regulation No. 1, EPA identified several issues with the revisions. Among these issues, EPA proposed to find that the revisions were inconsistent with the Act's requirements that SIP emission limits be met on a continuous basis, and based part of its analysis on the 1982 and 1983 Bennett memos. Since the agency has now issued an update to these pre-existing policy statements, EPA is issuing this supplemental notice in order to provide review of Colorado's SIP submittal in light of this updated policy and to provide the public with the opportunity to comment on this topic.

Since EPA received a request to extend the public comment period on the September 2, 1999 proposed disapproval, EPA is also providing an additional thirty days to comment on all of the issues raised in the September 2, 1999 proposed rulemaking. Thus, during this comment period, EPA will accept comments on any issue raised in our September 2, 1999 proposed disapproval as well as on any issue raised in this supplemental notice of proposed rulemaking.

II. EPA's Review of State's Submittal in Light of EPA's September 20, 1999 Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown

EPA's September 20, 1999 policy does not alter the Act's requirement that SIP emission limitations be met continuously. Instead, the September 20, 1999 policy clarifies the types of SIP provisions States may adopt to address startup, shutdown, and malfunction conditions and still ensure continuous compliance with emission limits needed to attain or maintain the national ambient air quality standards (NAAQS).

The revisions to Regulation No. 1 are not consistent with EPA's September 20, 1999 policy, and EPA continues to believe the revisions will not ensure continuous compliance with SIP emissions limits.

A. Description of EPA's September 20, 1999 Policy

The purpose of EPA's September 20, 1999 policy was to reaffirm and supplement EPA's September 28, 1982 and February 15, 1983 policy statements regarding excess emissions during malfunctions, startup, shutdown, and maintenance, as well as to clarify several issues of interpretation that have arisen since EPA issued those policy statements. In the September 20, 1999 policy, EPA states that ''* * * because excess emissions might aggravate air quality so as to prevent attainment or maintenance of the ambient air quality standards, EPA views all excess emissions as violations of the applicable emission limitation.'' However, EPA recognizes that imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of an owner or operator may not be appropriate. EPA similarly recognizes that the imposition of a penalty for excess emissions that occur during infrequent and short periods of startup and shutdown may not be appropriate when such excess emissions could not have been prevented through careful planning and design and when bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage. Accordingly, a State or EPA can exercise its ''enforcement discretion'' to refrain from taking an enforcement action in these circumstances.

The September 20, 1999 policy clarifies that a State may go beyond this ''enforcement discretion approach'' and include in its SIP a provision that would, in the context of an enforcement action for excess emissions, excuse a source from penalties (but not from injunctive relief) if the source can demonstrate that it meets certain objective criteria (i.e., an ''affirmative defense''). The September 20, 1999 policy provides that States can adopt SIP rules that provide for such an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction, startup, and shutdown episodes, if the SIP rules and SIP submittal meet certain criteria.

The September 20, 1999 policy discusses an additional means to address excess emissions during periods of startup and shutdown. The policy states that because, in general, excess emissions that occur during these periods are reasonably foreseeable, they should not be excused. However, for some source categories, even the best available emissions control systems might not be consistently effective during startup or shutdown periods. The September 20, 1999 policy provides that, in certain situations, these technological limitations may be addressed in the underlying standards themselves through narrowly-tailored SIP revisions that meet the requirements detailed in the policy and that take into account the potential impacts on ambient air quality caused by the inclusion of these allowances.

B. Review of Colorado's May 27, 1998 SIP Submittal in Light of EPA's September 20, 1999 Policy

1. Affirmative Defense Provisions for Malfunctions, Startup, and Shutdown

As discussed above, the September 20, 1999 policy provides that States can adopt SIP provisions that create an affirmative defense to claims for penalties for excess emissions caused by malfunctions or during periods of startup or shutdown, if the SIP revision and submittal adequately address the criteria detailed in the September 20, 1999 policy. Such an affirmative defense must not be available for claims for injunctive relief and must not apply in the case where a single source or small group of sources has the potential to cause an exceedance of the NAAQS or prevention of significant deterioration (PSD) increment.

Colorado's revisions to Regulation No. 1 do not meet EPA's requirements for an acceptable affirmative defense provision. In fact, the revisions do not constitute an affirmative defense provision at all; they do not merely provide for a source to raise a defense to penalties in an enforcement proceeding for violations of an emission standard. Instead, Colorado's revisions to Regulation No. 1 automatically exempt a source from meeting the otherwise applicable opacity and SO_2 emission limitations during startup, shutdown, and upset. Thus, EPA does not believe it can approve the revisions as an affirmative defense provision.[1] EPA believes an affirmative defense provision must be consistent with the criteria contained in the September 20, 1999 policy to ensure continuous compliance with the requirements of the Act.

2. Source Category-Specific Rules for Startup and Shutdown

As discussed above, the September 20, 1999 policy states that, for some source categories, given the types of control technologies available, there may exist short periods of emissions during startup and shutdown when, despite best efforts regarding planning, design, and operating procedures, the otherwise applicable emission limitation cannot be met. The September 20, 1999 policy further provides that, except in the case where a single source or small group of sources has the potential to cause an exceedance of the NAAQS or PSD increments, it may be appropriate, in consultation with EPA, to create narrowly-tailored SIP revisions that take these technological limitations into account and state that the otherwise applicable emissions limitations do not apply during narrowly defined startup and shutdown periods. To be approved, these revisions should meet the following requirements:

a. The SIP revision must be limited to specific, narrowly-defined source categories using specific control strategies;

b. There must be a demonstration that the use of the control strategy for this source category must be technically infeasible during startup or shutdown periods;

c. The frequency and duration of operation in startup or shutdown mode must be minimized to the maximum extent practicable;

d. As part of its justification of the SIP revision, the state should analyze the potential worst-case emissions that could occur during startup and shutdown, in order to show compliance with the applicable requirements of the Act and EPA regulations;

e. All possible steps must be taken to minimize the impact of emissions during startup and shutdown on ambient air quality;

f. At all times, the facility must be operated in a manner consistent with good practice for minimizing emissions, and the source must have used best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limitation; and

g. The owner or operator's actions during startup and shutdown periods must be documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[1] Even if the revisions met the other criteria for an acceptable affirmative defense provision, EPA does not have adequate information to determine whether a single coal-fired electric utility boiler or a small group of boilers would have the potential to cause an exceedance of the NAAQS or PSD increments, which would render an affirmative defense provision inappropriate.

As discussed above and in the September 2, 1999 proposed disapproval, Colorado's revisions to Regulation No. 1 provide exemptions from the existing opacity and SO_2 emission limitations for coal-fired electric utility boilers during periods of startup and shutdown, as well as upset. EPA does not believe that Colorado's revisions to Regulation No. 1 regarding startup, shutdown, and upset comport with the requirements for approval of such provisions as discussed in EPA's September 20, 1999 policy. First, EPA's September 20, 1999 policy, as discussed above, allows SIPs to provide for exemptions from emission limitations for periods of startup and shutdown only. Colorado's revisions to Regulation No. 1 also exempt coal-fired electric utility boilers from meeting existing opacity and SO_2 emission limitations during periods of upset.

Second, the exemption from the SO_2 limits does not appear to specify coal-fired electric utility boilers using a particular SO_2 control strategy. Thus, at least as to SO_2, it does not appear that the revisions are consistent with the policy's provision that a rule must be limited to narrowly-defined source categories using specific control strategies.

Third, the State has not demonstrated that use of the applicable control strategies for opacity and SO_2 for coal-fired electric utility boilers is technologically infeasible during startup and shutdown.

Further, as discussed in EPA's September 2, 1999 proposed disapproval, EPA does not believe the State has analyzed the potential worst case emissions that could occur from these facilities during startup and shutdown and the corresponding impact on ambient air quality. The State did not adequately analyze potential impacts on the NAAQS, nor did the State analyze potential impacts on the PSD increments. (See sections II.B.2. and 3. of the September 2, 1999 proposed disapproval, 64 FR 48130–48131.)

EPA also does not have adequate information to determine whether a single coal-fired electric utility boiler or a small group of boilers would have the potential to cause an exceedance of the NAAQS or PSD increment, which would preclude EPA from approving a source category-specific exemption under the September 20, 1999 policy. The SIP revision does not adequately address the other requirements of the September 20, 1999 policy applicable to source category exemptions for excess emissions that occur during startup and shutdown. EPA believes source category exemptions for startup and shutdown events must be narrowly constrained, as described in EPA's September 20, 1999 policy, to ensure the Act's requirements are met and that public health and the environment are protected.

In summary, the issuance of the September 20, 1999 policy has not changed EPA's preliminary conclusions, expressed in the September 2, 1999 proposed disapproval, that the revisions to Regulation No. 1 are not consistent with the Act's requirements related to continuous compliance with SIP limits. Because the requirements for continuous compliance have not been met, and for the other reasons expressed in EPA's September 2, 1999 notice of proposed disapproval, EPA continues to propose disapproval of the revisions to Colorado Regulation No. 1. EPA also continues to invite comment on whether the SIP revision conflicts with EPA's any credible evidence rule (see Section II.B.6. of the September 2, 1999 proposed disapproval, 64 FR 48134).

EPA is soliciting public comment on the issues discussed in this document or on other relevant matters. EPA is also extending the public comment period on the issues raised in the September 2, 1999 proposed disapproval. 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 such that the comments will be received by the date listed in the Dates section of this document.

III. Proposed Action

EPA continues to propose disapproval of the revision to the Colorado SIP pertaining to the opacity and SO_2 provisions in Regulation No. 1, which was submitted by the Governor of Colorado on May 27, 1998.

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 Orders on Federalism

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 proposed 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 proposed rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987),) on federalism still applies. This proposed rule will not have a substantial direct effect on 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 12612. The proposed rule would affect only one State, and would not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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, Sulfur oxides.

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

Dated: September 30, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–26200 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 264

[FRL–6452–9]

RIN 2050–AB80

Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Partial withdrawal of rulemaking proposal.

SUMMARY: The Environmental Protection Agency (EPA) is announcing our decision to withdraw most provisions of the Notice of Proposed Rulemaking (NPRM) for corrective action for solid waste management units (SWMUs) at hazardous waste management facilities (also known as the 1990 Subpart S proposal) published on July 27, 1990. The only exceptions to this decision relate to two jurisdictional issues and those elements of the proposed rule that were promulgated as a final rule on February 16, 1993. The jurisdictional issues relate to the definition of ''facility'' for corrective action purposes and the question of who is responsible for corrective action when there is a transfer of facility property. We plan to withdraw most of the proposed rule because we have determined that such regulations are not necessary to carry out the Agency's duties under sections 3004(u) and (v). Additionally, attempting to promulgate a comprehensive set of RCRA regulations at this time could unnecessarily disrupt the 33 State programs already authorized to carry out the Corrective Action Program in lieu of EPA, as well as the additional State programs currently undergoing review for authorization. This decision will end uncertainty related to this rulemaking for State regulators and owners and operators of hazardous waste management facilities.