

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if the proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 03-27186 Filed 10-28-03; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[SIP NO. MT-001-0048; FRL-7580-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Montana; Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove a State Implementation Plan revision submitted by the State of Montana on January 16, 2003. This revision provides existing aluminum plants an exemption to meeting emission limits during scheduled maintenance. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before November 28, 2003.

**ADDRESSES:** Written comments may be submitted by mail to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in (Part (I)(B)(1)(i) through (iii)) of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Laurie Ostrand, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202, (303) 312-6437, [oststrand.laurie@epa.gov](mailto:oststrand.laurie@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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#### *Definitions*

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The *MACT standard* refers to the National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

#### **I. General Information**

##### *A. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under MT-001-0048. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, CO. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You may view the public rulemaking file at the Regional Office Monday through Friday, 8 a.m. to 4 p.m., excluding federal Holidays.

2. Copies of the State submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

3. **Electronic Access.** You may access this **Federal Register** document electronically through the Regulations.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments

on, Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

##### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking MT-001-0048" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. **Electronically.** If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*i. E-mail.* Comments may be sent by electronic mail (e-mail). Please send any comments simultaneously to [long.richard@epa.gov](mailto:long.richard@epa.gov) and [ostrand.laurie@epa.gov](mailto:ostrand.laurie@epa.gov) and include the text "Public comment on proposed rulemaking MT-001-0048" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through "Regulations.gov" (see below), EPA's e-mail system will automatically capture your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

*ii. Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE" and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

*iii. Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

*2. By Mail.* Send your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Please include the text "Public comment on proposed rulemaking MT-001-0048" in the subject line on the first page of your comment.

*3. By Hand Delivery or Courier.* Deliver your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal Holidays.

*C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA.

You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

*D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## II. Background

On January 16, 2003, the State of Montana submitted a new rule for incorporation into the SIP. The rule is titled Administrative Rules of Montana (ARM) 17.8.335, Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants. On April 1, 2003, we sent a letter to the State

indicating that the submittal was complete pursuant to the requirements in 40 CFR part 51, appendix V.

The rule was adopted as part of the SIP. The rule covers maintenance of air pollution control equipment for existing aluminum plants. There is currently one source that is subject to this rule, the Columbia Falls Aluminum Company (CFAC) in Columbia Falls, Montana. CFAC operates a primary aluminum reduction plant. The plant is equipped with air pollution control equipment, including ducts conveying exhaust to dry scrubbers. The State and CFAC have indicated they believe that air pollution control equipment requires periodic maintenance to keep it in good operating order. The State and CFAC have also indicated that the failure to maintain the air pollution control equipment eventually results in the failure of the equipment. Finally, the State and CFAC have indicated that the failure of the equipment would result in air pollution emissions from the plant that exceed those allowed and may create an unacceptable risk to public health.

Further, the State and CFAC contend that the maintenance of the air pollution control equipment requires the plant to shut down the dry scrubbers and to bypass some of the dry scrubbers during the maintenance event. If the plant continues to operate during the shutdown of the dry scrubbers, the air pollution emissions from the plant may exceed those allowed by rules governing emission of air pollutants.

In the past the plant has applied to the State for a variance from rules governing emission of air pollutants so that the plant could conduct maintenance on the air pollution control equipment while continuing to operate the plant. CFAC contends that the process for obtaining a variance is time consuming. The State has adopted a rule that allows the plant to maintain air pollution control equipment while the plant is operating, without requiring the plant to obtain a variance.

Our review of ARM 17.8.335, Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, indicates that it is not approvable and we are proposing to disapprove Montana's SIP revision submitted on January 16, 2003 for the reasons indicated below.

### III. Why EPA Is Proposing To Disapprove the State of Montana's January 16, 2003 Submittal

#### *ARM 17.8.335 Is Not Consistent With the Clean Air Act (CAA) and EPA Policy*

First, ARM 17.8.335 provides an exemption to meeting emission limits for a specified source category during scheduled maintenance. Generally, since SIPs must provide for attainment and maintenance of the national ambient air quality standards (NAAQS) and the achievement of the prevention of significant deterioration of air quality (PSD) increments, all periods of excess emissions must be considered violations.<sup>1</sup> Accordingly, any provision that allows for an automatic exemption for excess emissions is prohibited. The appropriate mechanism for excusing excess emissions in this situation is through the exercise of enforcement discretion. We understand that the source conducted modeling to demonstrate that excess emissions during the maintenance procedures would not cause or contribute to violations of the Montana Ambient Air Quality Standards (MAAQS) or NAAQS. Our concerns with the modeling are discussed below.

The State contends that the new rule only indicates that the Department may not initiate an enforcement action for excess emissions during maintenance of air pollution control equipment that results in a violation of emission standards and that the rule does not contain an exemption from enforcement for maintenance activities that violate a federal or state ambient air quality standard or PSD increments.

We do not agree with the State. The 1970 Act established the air quality management process as a basic philosophy for air pollution control in this country. Under this system, we establish air quality goals (NAAQS) for common pollutants. States develop control programs (termed SIPs) and also issue permits under the PSD or nonattainment new source review programs, to assure that the NAAQS are attained and maintained. The NAAQS themselves are not an emission standard or limitation. *Coalition Against Columbus Center v. New York*, 967 F.2d 764, 769 (2d Cir. 1992). States establish enforceable emission limits in SIPs or permits at sources to assure that the NAAQS are met.

Second, in guidance documents issued by EPA and other final rulemakings, we have indicated that scheduled maintenance is a predictable event which can be scheduled at the discretion of the operator, and which can therefore be made to coincide with maintenance on production equipment, or other source shutdowns. Consequently, 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.<sup>2</sup>

The State contends that the aluminum process is unique in that the process does not include periodic shutdowns; the startup and shutdown process is expensive and lengthy; maintenance of the control equipment requires the plant to bypass some of the dry scrubbers. We are not convinced that the CFAC aluminum process is so unique, or that redundant control technology could not be added, to address scheduled maintenance. We are not aware of other aluminum facilities that have asked for an exemption to emission limits for scheduled maintenance. Some other aluminum facilities are designed so that maintenance can be completed on portions of the control equipment without having to shut down all of the control equipment.

We are proposing to disapprove ARM 17.8.335 because we believe it is inconsistent with the Act (*e.g.*, sections 110(a)(2)(E) and 110(i)), prior rulemakings and our guidance.

#### *Concerns With Impacts in the Columbia Falls PM-10 Nonattainment Area*

The impact of the "maintenance" emissions (*i.e.*, the additional 700 lbs of PM per 24-hour period expected during maintenance) on the Columbia Falls PM-10 nonattainment area were not analyzed. The State believes CFAC is in a different airshed from the nonattainment area and that emissions from CFAC do not have a significant impact on the Columbia Falls PM-10 nonattainment area. We believe that further analyses need to be completed before it can be determined that CFAC does not impact the Columbia Falls PM-10 nonattainment area. CFAC is only about one mile from the City of Columbia Falls. The State has not demonstrated that this plan revision

will not interfere with the attainment plan for the Columbia Falls PM-10 nonattainment area. Because of the potential impact in the Columbia Falls nonattainment area, we believe ARM 17.8.335, Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, may not be consistent with section 110(l) of the CAA. That is, EPA cannot approve a SIP revision if it interferes with any applicable requirement concerning attainment and reasonable progress or any other applicable requirement of the Act.

#### *Concerns With the Modeling*

DEQ's testimony in the matter of the amendment of air quality rules pertaining to maintenance of air pollution control equipment for existing aluminum plants indicates that CFAC modeled its normal operations plus 700 lbs of PM-10 per 24-hour period.<sup>3</sup> Therefore, the normal operating emissions were considered along with the maximum allowable increase (700 lbs of PM-10 per 24-hour period) from the proposed maintenance procedure. Additionally, only emissions from the CFAC facility were considered in the analysis because the State determined that adding background concentration of PM-10 emissions measured at the onsite PM-10 monitor adequately represented the emissions from other sources in the area. We believe this modeling approach is inconsistent with the modeling rules and will not assure protection of the NAAQS for several reasons.

Allowable emissions, rather than normal operating emissions, should be used in modeling. This requirement is contained in EPA's Guideline on Air Quality Models, 40 CFR part 51, appendix W, Table 9-1. Montana adopted these rules by reference and we have approved them into the State's SIP (see ARM 17.8.802(1)(g)). Additionally, "normal operating emissions" is not defined in the State's new rule and the rule does not explain how "normal operating emissions" are calculated. Finally, EPA's "Guideline on Air Quality Models" requires that any nearby point sources that cause a significant concentration gradient should also be included in the modeling. See 40 CFR part 51, appendix W, section 9.2.3. Other sources in the airshed including those at CFAC should also be included in the modeling.

The State only required that the source model one month (*i.e.*, September) for three years. We believe

<sup>1</sup> See EPA's September 20, 1999 memorandum from Steven A. Herman and Robert Perciasepe to Regional Administrators entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown."

<sup>2</sup> See EPA's September 28, 1982 policy memorandum from Kathleen M. Bennett to Regional Administrators, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction," page 3 of the Attachment. See also, 65 FR 51412, 51426 (August 23, 2000).

<sup>3</sup> The testimony is contained in the documents submitted with the January 16, 2003 SIP. See Tab 10 of the submittal.

this is problematic because it is extremely unlikely that one would capture worst case conditions that may occur in future September periods. Three months of data is not enough to find even slightly adverse conditions. The State believes that since maintenance is only allowed in September using three years of onsite meteorological data for September should adequately represent the types of meteorological conditions that would be encountered during the maintenance procedures. We do not agree. EPA's Modeling Guidelines requires five years of National Weather Service meteorology data be used in modeling to assure that the most adverse meteorological conditions are considered in the analysis. See Guideline on Air Quality Models, 40 CFR part 51, appendix W, section 9.3.1. Three months of data is clearly insufficient.

Lastly, the modeling assumed a background concentration of 17  $\mu\text{g}/\text{m}^3$ . This value was taken from the monitor near the plant and not the monitor in Columbia Falls. We are not convinced that the 17  $\mu\text{g}/\text{m}^3$  value is an appropriate value to be used for background concentration. Maximum ambient concentrations measured in Columbia Falls over the past several years in the August to October time frame have been on the order 16 to 48  $\mu\text{g}/\text{m}^3$ .

#### Concerns With the Maximum Achievable Control Technology (MACT) Requirements

EPA has two concerns regarding the interaction of this rule with the National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants (the MACT standard). First, we are concerned that by adopting this rule, the State of Montana may impact its automatic delegation of the MACT standard (40 CFR subpart LL, at ARM 17.8.103(1)(j) and 17.8.342) because the new rule could be interpreted to alter the requirements of the delegated MACT standard. Although the MACT standard adopted by Montana is not being revised, the new rule has a direct impact on the requirements of the MACT standard. EPA's MACT standard does not have any provision for exempting excess emissions during a maintenance event. Any excess emissions have to be reported and enforcement discretion used in determining what, if any, penalty is appropriate for the event. The MACT standard was automatically delegated to the State under the condition that the State's rule is identical to the EPA rule (40 CFR

63.91(a)(1)). If changes are made, the automatic delegation could be withdrawn and the State would have to undergo a formal delegation process in order to receive delegation for this MACT standard (40 CFR 63.91(a)(2)). This process would include a demonstration that the changed rule is at least as stringent as the EPA rule. Second, we are concerned that by adopting ARM 17.8.335, the State has rules with conflicting requirements—one set in the MACT standard adoption and one set in this SIP rule, leading to confusion for the source and public as to which one applies. We intend to engage the State in discussion to clarify this matter.

#### IV. Proposed Action

For the reasons identified above, EPA is proposing to disapprove the SIP revision submitted by the State of Montana on January 16, 2003. The submittal requests that ARM 17.8.335, Maintenance of Air Pollution Control Equipment For Existing Aluminum Plants, be added to the SIP. We are continuing to evaluate the impacts of the new rule on the delegation of the MACT standard, 40 CFR subpart LL, at ARM 17.8.103(1)(j) and 17.8.342, to the State. We are soliciting public comments on the issues discussed in this document. 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.

#### V. Statutory and Executive Order Reviews

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

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

##### B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*" 44 U.S.C. 3502(3)(A). Because this proposed rule does not impose an information collection burden, the Paperwork Reduction Act does not apply.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because EPA's proposed disapproval action only affects one industrial source of air pollution; Columbia Falls Aluminum Corporation. Only one source is impacted by this action. Furthermore, as explained in this action, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. The proposed disapproval will not affect any existing State requirements applicable to the entity. Federal disapproval of a State submittal does not affect its State enforceability. Therefore, because the Federal SIP disapproval does not create any new requirements nor impact a substantial number of small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

##### D. Unfunded Mandates Reform Act

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

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more

to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132, because it merely proposes to disapprove a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

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

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

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

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

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

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

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

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

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

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

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 17, 2003.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

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