

section 150 (b)(3), (b)(4), or (b)(5) to apply to an issue, the bonds of the issue allocable to that portion under section 150(c)(3) are the same as the nonqualified bonds determined for purposes of §§ 1.142-1, 1.144-1, and 1.145-1, except that bonds allocable to all common areas are also allocated to that portion.

(2) *Special rule when remedial action is taken.* If an issuer takes a remedial action with respect to an issue of private activity bonds under §§ 1.142-2, 1.144-2, or 1.145-2, the bonds of the issue allocable to a portion of property are the same as the nonqualified bonds determined for purposes of those sections.

(d) *Effective dates.* For effective dates of this section, see § 1.141-16.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	*
1.141-1	1545-1451
1.141-12	1545-1451
1.142-2	1545-1451
* * * *	*
1.148-6	1545-1451
* * * *	*

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 30, 1996.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
[FR Doc. 97-710 Filed 1-10-97; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO-001-0007; FRL-5669-5]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection, contained in Section VI of the document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements," as submitted by the Governor with a letter dated August 23, 1996. The revision incorporates into the SIP, among other things, emissions reduction requirements for the Hayden Station (a coal-fired steam generating plant located near the town of Hayden, Colorado) that are based on a consent decree addressing numerous air pollution violations at the plant. The SIP revision is expected to remedy Hayden Station's contribution to visibility impairment in the Mt. Zirkel Wilderness Area and, therefore, make reasonable progress toward the Clean Air Act National visibility goal with respect to such contribution. On October 3, 1996, EPA published a notice of proposed rulemaking that proposed to approve this SIP revision and provided a thirty-day period for public comment. EPA received one set of generally supportive comments regarding the proposed revision, and is therefore finalizing the proposal without modification.

EFFECTIVE DATE: This action is effective February 18, 1997.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405; Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 312-6445.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Clean Air Act (CAA or Act),¹ 42 U.S.C. section 7491, establishes as a National goal the prevention of any future, and the remedying of any existing, anthropogenic visibility impairment in mandatory Class I Federal areas² (referred to herein as the "National goal" or "National visibility goal"). Section 169A calls for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National visibility goal, including requiring each State with a mandatory Class I Federal area to revise its State Implementation Plan (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal. CAA section 169A(b)(2). Section 110(a)(2)(J) of the CAA, 42 U.S.C. section 7410(a)(2)(J), similarly requires SIPs to meet the visibility protection requirements of the CAA.

EPA promulgated regulations that require affected States to, among other things, (1) coordinate development of SIPs with appropriate Federal Land Managers (FLMs); (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term (10-15 years) strategy to assure reasonable progress toward the National visibility goal. See 45 FR 80084, December 2, 1980 (codified at 40 CFR 51.300-307). The regulations provide for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations require that the SIPs provide for periodic review, and revision as appropriate, of the long-term strategy not less frequently than every three years, that the review process include consultation with the appropriate FLMs, and that the State provide a report to the public and EPA that includes an assessment of the State's progress

¹ The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401 *et seq.*

² Mandatory class I Federal areas include international parks, national wilderness areas, and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) (42 U.S.C. 7472(a)). Each mandatory Class I Federal area is the responsibility of a "Federal land manager" (FLM), the Secretary of the department with authority over such lands. See section 302(i) of the Act, 42 U.S.C. 7602(i).

toward the National visibility goal. See 40 CFR 51.306(c).

On July 12, 1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), EPA disapproved the SIPs of states, including Colorado, that failed to comply with the requirements of the provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring), and 51.306 (visibility long-term strategy). EPA also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the CAA, 42 U.S.C. section 7410(c)(1).

The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 for general plan requirements, monitoring strategy, and long-term strategies. EPA approved this SIP revision in an August 12, 1988 Federal Register document (53 FR 30428), and this revision replaced the Federal plans and regulations in the Colorado Visibility SIP.

The Governor of Colorado submitted a subsequent SIP revision for visibility protection with a letter dated November 18, 1992. This revision was made to fulfill the requirements to periodically review and, as appropriate, revise the long-term strategy for visibility protection. EPA approved that long-term strategy revision on October 11, 1994 (59 FR 51376).³

Since Colorado's 1992 long-term strategy review, the U.S. Forest Service (USFS) certified visibility impairment in Mt. Zirkel Wilderness Area (MZWA) and named the Hayden and Craig Generating Stations in the Yampa Valley of Northwest Colorado as suspected sources. The USFS is the FLM for MZWA. This certification was issued on July 14, 1993.

Hayden Station, which is the focus of this SIP revision, is located 19 miles upwind from MZWA. The facility consists of two units as follows: Unit 1 is a 180 megawatt steam generating unit completed in 1965 and Unit 2 is a 260 megawatt steam generating unit completed in 1976. The facility is currently uncontrolled for sulfur dioxide (SO₂) and nitrogen oxides (NO_x) and operates electro-static precipitators to control particulate pollution. The 1995 emissions inventory for Hayden

Station indicated that the plant emitted 16,000 tons of SO₂ and 14,000 tons of NO_x. Particulate emissions have been more difficult to estimate due to control equipment malfunction.

On August 18, 1993, the Sierra Club sued the owners of the Hayden Station in United States District Court, alleging over 16,000 violations of the State's opacity standards and arguing that the alleged violations resulted in a number of air quality impacts in MZWA. On July 21, 1995, the Court found the Hayden Station owners liable for over 19,000 violations of the opacity standards between 1988 and 1993. See *Sierra Club v. Public Service Company of Colorado, et al.*, 894 F. Supp. 1455 (D. Colo. 1995). In October 1995, the Sierra Club, the Colorado Air Pollution Control Division (APCD), and the Hayden Station owners entered into negotiations to try to reach a "global settlement" of the various issues facing the power plant. These issues included the Sierra Club lawsuit and the USFS certification of impairment in MZWA. In January 1996, EPA issued a Notice of Violation (NOV) to the owners of the Hayden Station for continuing opacity violations and joined in the settlement negotiations.

On May 22, 1996, the parties to the negotiations (EPA, Sierra Club, State of Colorado, and the Hayden Station owners) filed a signed Consent Decree with the United States District Court for the District of Colorado, in Civil Action No. 93-B-1749. The United States published notice of the settlement in the Federal Register and provided a thirty-day public comment period. The United States responded to comments in a motion to the Court to approve the Consent Decree. The Court approved the Consent Decree on August 19, 1996. The Consent Decree resolves a number of issues, including the Sierra Club and EPA enforcement actions, and, as part of that resolution, requires substantial reductions in air pollutants that are intended to resolve Hayden Station's contribution to visibility impairment in MZWA. The Consent Decree contemplates incorporation into the SIP of the visibility protection-related requirements of the Consent Decree. The terms "Hayden Consent Decree" or "Consent Decree" are used herein to refer to this judicially-enforceable settlement.

II. Revision Submitted August 23, 1996

With a letter dated August 23, 1996, the Governor of Colorado submitted a revision to the long-term strategy portion of Colorado's SIP for Visibility Protection; this revision is contained in Section VI of the August 15, 1996

document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Visibility Protection, Part I: Hayden Station Requirements" (referred to below as "Long-Term Strategy Document"). The revision was made to fulfill, with respect to Hayden Station's contribution to visibility impairment in MZWA, the Federal and Colorado requirements to revise the long-term strategy as appropriate following the three-year periodic review.⁴ The State reviewed the long-term strategy in light of the USFS's certification of visibility impairment, the results of the Mt. Zirkel Visibility Study⁵ and other technical data, and the Hayden Consent Decree. Based on this review, the State concluded that a revision to the long-term strategy was necessary to remedy Hayden Station's contribution to visibility impairment at MZWA and to ensure reasonable progress toward the National visibility goal.

Only Part C of Section VI of the Long-Term Strategy Document contains provisions that are enforceable against the Hayden Station owners. Part C incorporates relevant portions of the Hayden Consent Decree into the long-term strategy. The remainder of the SIP revision contains provisions that are explanatory and analyses that are required by section 169A of the CAA, Federal visibility regulations (40 CFR 51.300 to 51.307), and/or the Colorado Visibility SIP.

On October 3, 1996, EPA published a notice of proposed rulemaking in the Federal Register (61 FR 51659) that proposed to approve the revision to the long-term strategy portion of Colorado's SIP for Visibility Protection that the Governor submitted on August 23, 1996. EPA provided a thirty-day public comment period and received one set of comments on the proposal. These comments and EPA's responses are provided in section III. of this document.

⁴The report resulting from this review was specific to Hayden Station, and the State reviewed the components of the Long-Term Strategy as they relate to Hayden Station only. According to a November 14, 1996 letter from Margie Perkins, Colorado Air Pollution Control Division, to Richard Long, EPA, the State intends to address Colorado's remaining visibility issues in "Part II" of the long-term strategy review and report, to be considered by the Colorado Air Quality Control Commission (AQCC) at a public hearing in March 1997. The State had previously projected a December 1996 AQCC public hearing on "Part II," but found this schedule impossible to meet.

⁵This collaborative study was spearheaded by the State to collect additional information regarding visibility conditions in the Mt. Zirkel Wilderness Area and to identify potential sources of impairment. The final report is available at the addresses listed in the beginning of this document. The study was completed on July 15, 1996.

³As a matter of clarification to EPA's October 11, 1994 action, please note that the September 1 due date referred to by EPA as the reporting deadline for Colorado's long-term strategy three-year reviews applies to the Colorado Air Pollution Control Division's responsibility to provide its review, and revision as appropriate, of the long-term strategy to the Colorado Air Quality Control Commission, with a submittal to EPA made by November 1 of each three-year cycle.

A. Part C of Section VI: Provisions from the Hayden Consent Decree

The State incorporated into its Visibility SIP revision provisions of the Hayden Consent Decree pertinent to visibility, including Definitions, Emission Controls and Limitations, Continuous Emission Monitors, Construction Schedule, Emission Limitation Compliance Deadlines, and Reporting.⁶ Such provisions must be met by the Hayden Station owners and are enforceable. The Consent Decree numbering scheme was retained to avoid confusion between the SIP and the Consent Decree, but only those sections pertinent to visibility, necessary to ensure enforceability of the requirements related to visibility, and necessary to assure reasonable progress in remedying Hayden Station's contribution to visibility impairment at MZWA were adopted into the SIP. Some changes were made to Consent Decree language to conform to a SIP framework. Finally, changes were made to the force majeure provisions of the Consent Decree to ensure that a demonstration of reasonable progress could be made at this time. Provisions of particular interest incorporated from the Hayden Consent Decree are summarized below.⁷

SO₂ Emission Limitations

As described below, the SO₂ emission limitations will result in at least an 82% reduction in SO₂ from Hayden Station. The Hayden Station owners must install a Lime Spray Dryer (LSD) system to meet the emissions limitations. The following emissions limitations apply:

- No more than 0.160 lbs SO₂ per million Btu heat input on a 30 boiler operating day rolling average basis;
- No more than 0.130 lbs SO₂ per million Btu heat input on a 90 boiler operating day rolling average basis;
- At least an 82% reduction of SO₂ on a 30 boiler operating day rolling average basis (to make sure that substantial reductions occur and that control equipment is run optimally even if lower sulfur coal is used); and
- A unit cannot operate for more than 72 consecutive hours without any SO₂

⁶The Consent Decree also includes requirements for NO_x emission controls and limitations; however, since these controls and limits do not have a direct relationship to visibility, they are not being incorporated into this Visibility SIP revision nor will any detailed discussion be provided. The NO_x requirements were included in the Consent Decree to address acid deposition concerns.

⁷Pursuant to the provisions of the Hayden Consent Decree and the SIP, the Hayden Station owners have elected to continue burning coal at Hayden Station. Thus, although the Consent Decree and the SIP contain provisions applicable to a switch to natural gas, the summary contained herein only addresses Consent Decree requirements applicable to coal combustion.

emissions reductions; that is, it must shut down if the control equipment is not working at all for three days (to prevent the build-up of SO₂ emissions that may lead to visibility impairment events).

Since SO₂ is a chemical precursor to visibility-impairing sulfate particles or aerosols, the State concluded that these SO₂ emissions limitations will help remedy the facility's contribution to visibility impairment in MZWA.

Particulate Emission Limitations

The Hayden Station owners must install and operate a Fabric Filter Dust Collector (known as a baghouse or FFDC) on each unit. Particulate emissions should be virtually eliminated. Particulate emission limitations for each unit are:

- No more than 0.03 lbs of primary particulate matter per million Btu heat input; and
- No more than 20.0% opacity, with certain limited exceptions, as averaged over each separate 6-minute period within an hour as measured by continuous opacity monitors.

Compliance with Emissions Limits

All required controls must be designed to meet enforceable emission limits. Compliance with the SO₂ and opacity emission limits shall be determined by continuous emission monitors.

Schedule—Coal as Primary Fuel

The schedule for constructing control equipment is as follows:

Unit 1

- Commencement of physical, on-site construction of control equipment by 6/30/97
- Commencement of start-up testing of FFDC and SO₂ control equipment by 12/31/98

Unit 2

- Commencement of physical, on-site construction of control equipment by 6/30/98
- Commencement of start-up testing of FFDC and SO₂ control equipment by 12/31/99

The schedule for commencement of compliance with the emissions limitations is as follows:

SO₂

- For Unit 1, within 180 days after flue gas is passed through the SO₂ control equipment, or by July 1, 1999, whichever date is earlier.
- For Unit 2, within 180 days after flue gas is passed through the SO₂ control equipment, or by July 1, 2000, whichever date is earlier.

Particulates

—For Unit 1, within 90 days after flue gas is passed through the FFDC control equipment, or by April 1, 1999, whichever date is earlier.

—For Unit 2, within 90 days after flue gas is passed through the FFDC control equipment, or by April 1, 2000, whichever date is earlier.

These construction deadlines and emission limitation compliance deadlines are subject to the "force majeure" provisions of the Consent Decree, which are being included in this SIP revision. A force majeure event refers to an excused delay in meeting construction deadlines or in meeting emission limitation compliance deadlines due to certain limited circumstances wholly beyond the control of the Hayden Station owners.

To help ensure that reasonable progress continues to be made, the State has committed to reopen the SIP (with public notice and hearing) as soon as possible after it is determined that a construction schedule or an emission limitation schedule has been, or will be, delayed by more than 12 months as a result of a force majeure determination or determinations. The State will re-evaluate the SIP at that time to determine whether revisions are necessary to continue to demonstrate reasonable progress. Necessary revisions may include the adoption of new construction or compliance deadlines as necessary to ensure that the emission limitations are met. In addition, the SIP also contains a clarification that the force majeure provisions are not to be construed to authorize or create any preemption or waiver of the requirements of State or Federal air quality laws, or of the requirements contained in the SIP or Consent Decree.

EPA believes that the language of the SIP should assure reasonable progress toward the National visibility goal with respect to Hayden Station's contribution to visibility impairment in the MZWA. In general, if deadlines extend more than twelve months, EPA fully expects the State to revise the SIP.

B. Remainder of SIP Revision

1. Analysis of Reasonable Progress

Congress established as a National goal "the prevention of any future, and the remedying of any existing" anthropogenic visibility impairment in mandatory Class I Federal areas. The statute does not mandate that the national visibility goal be achieved by a specific date but instead calls for "reasonable progress" toward the goal. Section 169A(b)(2) of the CAA requires EPA to issue implementing regulations requiring visibility SIPs to contain such

“emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the National goal.”

EPA’s implementing regulations provided for an initial round of visibility SIP planning which included a long-term strategy to make reasonable progress toward the National goal. See 40 CFR 51.302(c)(2)(I) and 51.306. The regulations also provide that the affected FLM may certify to a State at any time that visibility impairment exists in a mandatory Class I Federal area. See 40 CFR 51.302(c)(1). Recognizing the need to periodically evaluate the effectiveness of the long-term strategy in protecting visibility, EPA required States to review their long-term strategies at least every three years. See 40 CFR 51.306(c). This requirement ensures that States will periodically assess their visibility-related air quality planning in light of a certification of impairment from the FLM, information about visibility conditions and sources gathered from the visibility monitoring requirements, or other relevant information. A central aspect of the periodic assessment is to evaluate “[a]dditional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national goal.” See 40 CFR 51.306(c)(4).

Section 169A(g)(1) of the CAA specifies factors that must be considered in determining reasonable progress including: (1) the costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of the source. Protection of visibility in a mandatory Class I Federal area is the objective.

In this unique case, the Hayden Station owners have agreed in the context of a judicially-enforceable Consent Decree to meet emissions limitations that are expected to reduce Hayden Station’s contribution to visibility impairment in MZWA to below perceptible levels. The State analyzed the emission reductions provided for in the Consent Decree in light of the statutory factors for determining reasonable progress and the ultimate objective of protecting visibility. The State concluded that the measures assure reasonable progress by remedying Hayden Station’s contribution to perceptible visibility impairment in MZWA and submitted a visibility SIP revision containing these measures.

Further, in a June 24, 1996 letter from Elizabeth Estill, USFS, Rocky Mountain Region, to Margie Perkins, APCD, the

USFS concluded that the magnitude of the emission reductions for particulates and sulfur oxides contained in the Consent Decree should effectively address the USFS’s concerns with visibility impairment in MZWA associated with the Hayden Station. Based in part on this letter, the State concluded that the pertinent provisions of the Hayden Consent Decree, as embodied in the SIP revision, effectively resolve the USFS certification of impairment in MZWA in relation to Hayden Station.

EPA has reviewed the State’s SIP revision and supporting information in light of the statutory and regulatory requirements and is approving it. EPA believes the State has reasonably concluded that the emission reduction measures at Hayden Station required in the judicially-enforceable Consent Decree and contained in this visibility SIP revision will remedy Hayden Station’s contribution to perceptible visibility impairment at MZWA⁸, with reasonable costs, an expeditious compliance schedule, and no significant adverse energy or non-air quality environmental impacts. The State’s August 15, 1996 SIP revision and accompanying information, available at the addresses listed at the beginning of this document, provide a detailed analysis of each of the “reasonable progress” considerations. EPA’s summary and evaluation of the State’s analysis can be found in EPA’s October 3, 1996 notice of proposed rulemaking (see 61 FR 51662–51664).

2. Six Factors Considered in Developing the Long-Term Strategy

The State considered the six factors contained in 40 CFR 51.306(e) when developing this revision to its long-term strategy. Please refer to EPA’s October 3, 1996 notice of proposed rulemaking for a discussion of these six factors (see 61 FR 51664–51665).

C. Additional Requirements

The State met the requirements for FLM consultation prior to adopting the SIP. The SIP also meets EPA requirements related to enforceability. Please refer to EPA’s October 3, 1996 notice of proposed rulemaking for a discussion of these requirements (see 61 FR 51665).

⁸It should be noted that current Hayden Station emissions are not expected to contribute to visibility impairment under all meteorological conditions and that regional haze from outside Colorado, emissions from sources outside Colorado, and emissions from other Colorado sources could also be contributing to visibility impairment in MZWA.

III. Public Comments and EPA Responses

EPA received only one set of comments—from the Hayden Station owners. A summary of their comments, and EPA’s responses, are provided below.

Comment: The Hayden Station owners indicate their strong support for EPA’s proposed approval of the August 23, 1996 revision of the Colorado State Implementation Plan incorporating the requirements for Hayden Station and urge EPA to act quickly in granting final approval of the proposed rule.

Response: EPA notes the Hayden Station owners’ support for the proposed action.

Comment: The Hayden Station owners take issue with some of EPA’s statements in the discussion accompanying the proposed SIP revision. Although the Hayden Station owners indicate these statements do not impact the Hayden Station owners’ support for the proposed rule, EPA is providing responses to the Hayden Station owners’ comments. The Hayden Station owners made the following comments that fall in this category:

1. The Hayden Station owners take issue with EPA’s statement in the notice of proposed rulemaking that if a force majeure delay lasts more than 12 months, EPA fully expects the State to revise the SIP. The Hayden Station owners claim that EPA has misstated the necessary consequences of a reopening of the SIP in the event that a force majeure delay lasts more than 12 months, and that the State may take action other than revising the SIP in response to a delay greater than 12 months.

Response: In making this statement in the notice of proposed rulemaking, EPA was indicating its expectation that, in general, a delay greater than 12 months will require a SIP revision to ensure reasonable progress. EPA acknowledges that there may be situations—for example, where the delay is not likely to last much longer than 12 months—in which a SIP revision may not be necessary.

2. The Hayden Station owners state that EPA has alleged that malfunctions of existing opacity control equipment have caused primary particulate matter plumes which have degraded visibility in the MZWA. Although the Hayden Station owners do not object to the inclusion of opacity and particulate matter standards in the SIP revision, they state that they are unaware of any data that indicate that primary particulate matter has caused any perceptible change in visibility in the

MZWA. They further state that the MZWA visibility study confirms that primary particulate matter is not a source of visibility impairment in the MZWA.

Response: The Hayden Station owners have mischaracterized EPA's statements in the notice of proposed rulemaking. In the relevant section of the notice of proposed rulemaking, EPA summarizes conclusions made by the State (see 61 FR 51663-51664). The State indicates that particulate plumes may be a source of visibility impairment in the MZWA. EPA agrees with this conclusion and believes the MZWA visibility study supports it. Referring to an episode during which a primary particulate plume emanated from the Hayden Station, the study states, "On one occasion in 1995, a clearly defined, coherent plume from the Hayden generating station could be seen in a west-facing video view from a camera on Storm Peak (which is south of the Wilderness boundary). The plume was moving toward Storm Peak at nearly the same elevation as the camera. The extent to which the plume reached or rose over the Continental Divide could not be determined because it could not be seen in views to the north. However, it is clear that the potential existed for the plume to reach the Storm Peak area. This was the only occasion when a clearly-defined, coherent generating station plume was documented coming close to the Wilderness." This episode shows that particulate plumes are capable of moving from Hayden Station to a distance as far away as the Wilderness boundary. Under the right meteorological and plant operating conditions, EPA believes it is reasonable to expect that particulate plumes may occasionally impair visibility within MZWA. Given the limited duration of the MZWA visibility study and the relatively sparse monitoring network, EPA believes it is unreasonable to conclude, as the Hayden Station owners have suggested, that "the MZWA visibility study confirms that primary particulate matter is not a source of visibility impairment in the MZWA."

3. The Hayden Station owners assert that EPA's analysis of rate impacts is oversimplified and probably inaccurate.

Response: In its notice of proposed rulemaking, EPA was summarizing the State's analysis of the potential impact on rates, not performing its own analysis (see 61 FR 51663). EPA believes the State's analysis was adequate to estimate the potential costs of controls for purposes of this action. Given that the calculation of rates is a complex process, EPA does not assert that the

ultimate impact on rates will be exactly consistent with the State's analysis.

IV. Final Action

EPA has reviewed the adequacy of the State's revision to the long-term strategy portion of Colorado's SIP for Class I Visibility Protection, contained in Section VI of the August 15, 1996 document entitled "Long-Term Strategy Review and Revision of Colorado's SIP for Class I Visibility Protection, Part I: Hayden Station Requirements," as submitted by the Governor with a letter dated August 23, 1996. EPA is approving this revision, which includes the incorporation of certain requirements from the Hayden Consent Decree. This SIP revision replaces the previous existing impairment portion of the long-term strategy as it relates to the MZWA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify 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 government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I

certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

C. 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 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 approves 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.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by March 17, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: December 10, 1996.
Kerrigan Clough,
Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(79) to read as follows:

§52.320 Identification of plan.

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(c) * * *

(79) On August 23, 1996, the Governor of Colorado submitted a revision to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection. The revision was made to incorporate into the SIP, among other things, emissions reduction requirements for the Hayden Station (a coal-fired steam generating plant located near the town of Hayden, Colorado) that are based on a consent decree addressing numerous air pollution violations at the plant. This SIP revision replaces the previous existing impairment portion of the long-term strategy as it relates to the Mt. Zirkel Wilderness Area.

(i) Incorporation by reference.

(A) Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection Part I: Hayden Station Requirements, as follows:

Section VI., effective on August 15, 1996.

[FR Doc. 97-1043 Filed 1-15-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 82

Protection of Stratospheric Ozone

CFR Correction

In title 40 of the Code of Federal Regulations, parts 81 to 85, revised as of July 1, 1996, § 82.32 (e)(1) and (2) was incorrectly revised. The corrected text should read as follows.

§ 82.32 Definitions.

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(e)(1) Properly using means using equipment in conformity with Recommended Service Procedures and Recommended Practices for the Containment of R-12 (CFC-12) set forth in appendix A or appendix B to this subpart, as applicable. In addition, this term includes operating the equipment in accordance with the manufacturer's guide to operation and maintenance and using the equipment only for the controlled substance for which the machine is designed. For equipment that extracts and recycles refrigerant, properly using also means to recycle refrigerant before it is returned to a motor vehicle air conditioner. For equipment that only recovers refrigerant, properly using includes the requirement to recycle the refrigerant on-site or send the refrigerant off-site for reclamation.

(2) Refrigerant from reclamation facilities that is used for the purpose of recharging motor vehicle air conditioners must be at or above the standard of purity developed by the Air-conditioning and Refrigeration Institute (ARI 700-93) (which is codified at 40 CFR part 82, subpart F, appendix A, and is available at 4301 North Fairfax Drive, Suite 425, Arlington, Virginia 22203). Refrigerant may be recycled off-site only if the refrigerant is extracted using recover only equipment, and is subsequently recycled off-site by equipment owned by the person that owns both the recover only equipment and owns or operates the establishment at which the refrigerant was extracted. In any event, approved equipment must be used to extract refrigerant prior to performing any service during which discharge of refrigerant from the motor vehicle air conditioner can reasonably be expected. Intentionally venting or disposing of

refrigerant to the atmosphere is an improper use of equipment.

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[FR Doc. 97-55573 Filed 1-15-97; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

48 CFR Parts 904, 906, 908, 915, 923, 925, 945, 952, and 970

RIN 1991-AB34

Acquisition Regulation; Technical Amendments

AGENCY: Department of Energy (DOE).

ACTION: Final rule, technical amendments.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to perform "housekeeping" duties such as conforming certain sections of the DEAR to recent Federal Acquisition Regulation changes, updating organizational and other references, correcting dates in contract clauses, and clarifying certain text. These corrections and changes are technical in nature and none of them raises substantive issues or represents changes in policy.

EFFECTIVE DATE: This final rule will be effective February 18, 1997.

FOR FURTHER INFORMATION CONTACT: P. Devers Weaver, Office of Policy (HR-51), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0705, 202-586-8250.

SUPPLEMENTARY INFORMATION:

- I. Explanation of Revisions
- II. Procedural Requirements
 - A. Procedural Determinations
 - B. Review Under Executive Order 12612
 - C. Review Under Executive Order 12866
 - D. Review Under Executive Order 12988
 - E. Review Under the National Environmental Policy Act
 - F. Review Under the Paperwork Reduction Act
 - G. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
 - H. Review Under the Unfunded Mandates Reform Act of 1995

I. Explanation of Revisions

None of the revisions in this rule is substantive. However, readers may benefit from an explanation of some of the revisions.

The authority citations for Parts 925 and 952 have been conformed to those used for all other parts of the regulation