1. The State has complied with all the major conditions listed in this proposed notice.

2. The EPA's review of the State's program evaluation confirms that the appropriate amount of program credit was claimed by the State and achieved with the interim program.

3. Final DPS program regulations are submitted to EPA.

4. The State I/M program meets all of the requirements of EPA's I/M rule, including those deficiencies found *de minimis* for the purposes of interim approval.

5. The remote sensing program proves to be effective in identifying and obtaining repairs on vehicles with high levels of emissions, or the Texas I/M core program area is expanded to include the entire urbanized area for both Dallas/Fort Worth and Houston.

VI. Proposed Action

The EPA is proposing to grant conditional interim approval of the State's submission contingent upon the State obtaining all of the additional authority needed to implement the program outlined in the Governor's Executive Order. In addition, the EPA is issuing conditional interim approval contingent upon the program starting by November 15, 1997. The EPA proposes that if the State fails to obtain the needed additional legal authority as outlined in the Governor's Executive Order, or fails to start the program by November 15, 1997, the approval will convert to a disapproval after a letter is sent notifying the State of the conversion to disapproval. The minor or *de minimis* deficiencies regarding immediate suspension authority of inspectors and a penalty schedule will need to be corrected before final full approval will be granted.

As stated previously, interim approvals granted under the NHSDA are valid for 18 months subject to an adequate program demonstration justifying the program is achieving the claimed emission reductions.

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

VII. 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 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. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the 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 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. See *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

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.

The EPA has determined that the conditional 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 preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 9, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–25397 Filed 10–2–96; 8:45 am]

BILLING CODE 6560–01–P

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40 CFR Part 52

[CO–001–0007; FRL–5630–8]

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: Proposed rule.

SUMMARY: EPA is proposing to approve revisions 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 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. EPA proposes to approve the SIP revision, which 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.

DATES: Comments on this proposed action must be received in writing by November 4, 1996.

ADDRESSES: Comments should be addressed to Richard Long, Director, Air Program, 8P2–A, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

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; and Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Air Program, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Clean Air Act (CAA),[1] 42 U.S.C. 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 areas[2] (referred to herein as the ''National goal'' or ''National visibility goal''). Section 169A called 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 required 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 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 notice (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 SO_2 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 SO_2 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

[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).

[3] As 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.

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 an August 15, 1996 revision to the long-term strategy portion of Colorado's SIP for Visibility Protection, entitled ''Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Visibility Protection, Part I: Hayden Station Requirements.'' 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 Study[5] 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.

Among other things, the SIP revision submitted by the Governor incorporates provisions of the Hayden Consent Decree that require the owners of Hayden Station to install control equipment or switch to natural gas and meet stringent emission limitations for particulates (including opacity) and sulfur dioxide (SO_2).

A. Analysis of State Submission

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see Section 110(k)(1) and 57 FR 13565]. EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA within six months after receipt of the submission.

To entertain public comment, the Colorado Air Quality Control Commission (AQCC), after providing adequate notice, held a public hearing on August 15, 1996 to consider the proposed revision to the Long-Term Strategy of the Visibility SIP, Part I: Hayden Station Requirements. Following the public hearing, the AQCC adopted the revision. The Governor of Colorado submitted the SIP revision to EPA with a letter dated August 23, 1996.

EPA reviewed the SIP revision to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. EPA found the submittal complete and forwarded a letter dated August 29, 1996 to the Governor indicating the completeness of the submittal and the next steps in the review process.

2. Content of SIP Revision

The SIP 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 Class I Visibility Protection, Part I: Hayden Station Requirements. Only Part C of Section VI 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.

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.

SO_2 Emission Limitations—As described below, the SO_2 emission limitations will result in at least an 82%

[4] The 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 an August 16, 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 two'' of the Long-Term Strategy review and report by December 1996.

[5] This 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.

[6] The 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.

reduction in SO_2 from Hayden Station. The Hayden Station owners must install a Lime Spray Dryer (LSD) system to meet the emissions limitations or must switch to natural gas. The following emissions limitations apply regardless of the fuel utilized:

—No more than 0.160 lbs SO_2 per million Btu heat input on a 30 boiler operating day rolling average basis;
—No more than 0.130 lbs SO_2 per million Btu heat input on a 90 boiler operating day rolling average basis;
—At least an 82% reduction of SO_2 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 SO_2 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 SO_2 emissions that may lead to visibility impairment events).

Since SO_2 is a chemical precursor to visibility-impairing sulfate particles or aerosols, the State has concluded that these SO_2 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 unless the owners elect to switch to natural gas. In either case, 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 SO_2 and opacity emission limits shall be determined by continuous emission monitors.

Hayden Station Owner's Decision: Coal vs. Natural Gas—No later than November 17, 1996 the Hayden Station owners must decide whether to continue using coal as the primary fuel at the Hayden Station or to switch to natural gas.

Schedule—Coal as Primary Fuel—Should the owners of the Hayden Station elect to continue to burn coal, 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 SO_2 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 SO_2 control equipment by 12/31/99

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

SO_2
—For Unit 1, within 180 days after flue gas is passed through the SO_2 control equipment, or by July 1, 1999, whichever date is earlier.
—For Unit 2, within 180 days after flue gas is passed through the SO_2 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.

Schedule—Natural Gas as Primary Fuel—Should the owners of the Hayden Station elect to switch to natural gas, the construction schedule is as follows:

Units 1 & 2
—Initiate permitting activities for construction of natural gas pipeline by 10/30/96
—Complete construction of pipeline and Hayden Station boiler modifications and commence use of natural gas as primary fuel source by 12/31/98

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

SO_2 and Particulates
—February 1, 1999 or 30 days after the owners of Hayden Station commence use of natural gas as the primary fuel source, whichever date is earlier.

These construction deadlines and emission limitation compliance deadlines (for either coal or natural gas as primary fuel) 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 commits 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. If deadlines extend more than twelve months, EPA fully expects the State to revise the SIP.

b. Remainder of SIP Revision

i. 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 has 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 has concluded that the measures assure reasonable progress by remedying Hayden Station's contribution to perceptible visibility impairment in MZWA and has 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 concludes that the pertinent provisions of the Hayden Consent Decree, as embodied in this 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 proposes to approve 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 MZWA, 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, provides a detailed analysis of each of the ''reasonable progress'' considerations. EPA has reviewed these ''reasonable progress'' considerations and a summary of the State's analysis follows.

(a) Factor (1) Cost of Compliance

The costs of compliance are reasonable. The State found the cost of the control equipment (approximately $120 million) at the facility to be within the range of retrofit costs at other facilities. It is important to note that neither the Consent Decree, nor this SIP revision, dictates that the owners continue to burn coal or switch to natural gas at the Hayden Station. The owners retain the discretion to make this choice and presumably will evaluate cost as one factor in making their decision.

The cost of switching the plant to natural gas is not known at present and is the subject of a current study by the Hayden Station owners, who must determine by November 17, 1996 whether to continue to use coal or switch to natural gas. However, in terms of evaluating the associated costs, the State believes that available information for a coal retrofit suffices. The State's rationale is that if natural gas is more expensive, it is unlikely that the Hayden Station owners will switch fuels. If natural gas is less expensive, then the coal retrofit analysis serves as an upper bound estimate of costs.

At this time, it is unknown whether the Colorado Public Utilities Commission (PUC) will give approval for the costs to be passed into the rate base (*i.e.*, pass the costs along to the electricity customers). If the PUC does give such approval, the State estimates that it would result in a rate increase of approximately 1.42%, or an increase to the average household electric bill of $0.58/month. As a comparison, EPA estimated the cost of pollution controls (SO_2 only) to remedy visibility impairment in Grand Canyon National Park from the Navajo Generating Station in Arizona to result in a maximum increase of $1.72/month for the average customer at that time (1992), *i.e.*, more than the potential rate-based cost to customers for the Hayden Station retrofit, which includes both SO_2 and particulate controls. The State also compared costs with the results of an EPA modelling study[7] which estimated the retrofit costs for SO_2 control at 200 coal-fired electric utilities and found the costs to be reasonable.

The State found that estimated costs for SO_2 and particulate emission reductions at Hayden Station appear to be lower or similar to estimates for other projects. The State concludes, therefore, that the cost of these SO_2 and particulate emission reductions is reasonable.

(b) Factor (2) Time Necessary for Compliance

The time necessary for compliance is reasonable. If the Hayden Station owners elect to continue using coal as their primary fuel, start-up testing of the baghouses and SO_2 control equipment will occur by 12/31/98 for Unit 1 and 12/31/99 for Unit 2. If the owners elect to switch to natural gas as the primary fuel, they must do so by 12/31/98. Even in the longest scenario (coal retrofit), only approximately 3½ years would elapse between the filing of the Hayden Consent Decree and the operation of control equipment.[8] By comparison, EPA's Federal Implementation Plan (FIP) implementing visibility protection measures for Grand Canyon National Park allowed approximately 6, 7, and 8 years, respectively, for the installation of SO_2 controls on the Navajo Generating Station's three 750 megawatt units. See 56 FR 50172 (October 3, 1991). In addition, the State notes that alternative regulatory processes might allow a significantly longer period of time to install controls or switch to natural gas.

(c) Factor (3) Energy and Non-air Quality Environmental Impacts of Compliance

Any negative impacts are minimal, as discussed below.

Natural Gas

If the Hayden Station owners elect to switch to natural gas as the primary fuel, the owners will have to initiate permitting, design and construction activities for a natural gas pipeline. The construction of any pipeline generally

[7] ''Project Summary: Retrofit Costs for SO_2 and NO_X Control Options at 200 Coal-Fired Plants,'' EPA/600/S7–90–021, March 1991.

[8] EPA notes that should this proposed approval be finalized, the time period between SIP approval and operation of control equipment would be even shorter.

would cause disturbances, and such disturbances would be addressed during permitting.

Coal

If the Hayden Station owners elect to retrofit for continued coal use, there are (1) energy, (2) water, and (3) ash and sludge impacts.

(1) Energy Impacts. It is estimated that the use of baghouses and LSDs would decrease the plant output by 1.1%, due to the energy needed to run these systems.

(2) Water Impacts. Some additional water use would be necessary to operate the LSDs. Most of the required water would come from the reuse of water in evaporation ponds. The remainder would come from existing water rights owned by Hayden Station in the Yampa River.

(3) Ash and Sludge Impacts. Hayden Station's solid waste stream would be changed as a result of the LSD operations. In addition to coal ash in the baghouse, the LSD would add spent reagent plus unreacted absorbent, typically low in solubility and not considered an environmental disposal problem. The operator of Hayden Station (Public Service Company of Colorado—''PSCo'') has indicated that, should a retrofit be chosen, these compounds and flyash would be disposed of in the current landfill located near the plant, and no major changes to the current solid waste disposal practices would be required. However, the quantity of waste generated, and therefore needing disposal, would be increased by 36%.

Overall, the State concludes that any energy and non-air quality related impacts are acceptable from either a natural gas conversion or a coal retrofit, as required by this SIP revision.

Additionally, in a July 10, 1996 letter from Elizabeth Estill, USFS, Rocky Mountain Region, to Margie Perkins, APCD, the USFS indicated that the significant reductions in SO_2 emissions required in this SIP revision, as well as the NO_X emission reductions required under the Consent Decree, will provide positive environmental impacts to the aquatic ecosystems in MZWA.

(d) Factor (4) Remaining Useful Life of Source

PSCo has indicated it anticipates a useful life of the Hayden Station on the order of another 20 years, provided that the plant remains competitive in the marketplace. Therefore, the State believes that the retrofit or conversion required in this SIP revision is reasonable. The State's conclusion is based on the overall competitive position of PSCo in the region, the typical current projected life of electric generating stations, and past representation of the remaining life of the Hayden Station made by PSCo in its 1994 Annual Report (indicated remaining life of Unit 1 as 20 years and Unit 2 as 31 years).

(e) Visibility Benefits and Level of Emission Reduction

(1) Visibility Benefits

Any contribution to visibility impairment in MZWA from the Hayden Station would come from primary particulate plumes and/or a locally generated sulfate haze. Based on the State's technical judgment, experience with information generated regarding the operation of the Hayden Station, and findings of the Mt. Zirkel Visibility Study, there is close correspondence between occasions when particulate plumes are clearly visible from the Hayden Station and malfunctions with its existing electro-static precipitators. The conversion of the station to natural gas or use of baghouses will virtually eliminate particulate plumes coming from Hayden Station that may enter MZWA. With regard to locally generated sulfate hazes, it is the State's technical judgment that removing at least 82%[9] of Hayden Station's 1995 inventory of 16,000 tons/year of SO_2 emissions will effectively address visibility problems in MZWA caused by SO_2 emissions from the facility. Any contribution to visibility impairment in MZWA from Hayden Station SO_2 emissions will be reduced to below perceptible levels. The State also notes that evidence in the Mt. Zirkel Visibility Study indicates that eliminating Hayden Station's SO_2 emissions (which the Consent Decree and this SIP revision nearly accomplish) would result in a change in visibility in MZWA that would be perceptible.[10] EPA believes these conclusions are reasonable.

(2) Level of Emission Reductions

The State believes that the level of particulate reduction at Hayden Station is appropriate and bases this conclusion, in part, on a comparison of levels of control required at the most recently permitted coal-fired utilities in Colorado. In each case, the emission limit was set at 0.03 lbs per million Btu heat input, *i.e.*, the same limit required for the Hayden Station retrofit/conversion. The State also believes that the SO_2 emission limits for Hayden Station are comparable to, or better than, what is generally required for new sources. Hayden Station's emission limits were established by reducing the sulfur content of its coal by 85%.

(f) Reasonable Progress

The measures contained in the SIP revision will produce significant emission reductions that are expected to effectively eliminate Hayden Station's contribution to visibility impairment in MZWA. The retrofit or conversion requirements appear to be reasonable upon examination of the associated costs, time necessary for compliance, energy and non-air quality environmental impacts, and remaining useful life of the facility. By expeditiously remedying Hayden Station's perceptible contribution to visibility impairment in MZWA, at a reasonable cost and in a reasonable time frame without undue energy or non-air quality environmental impacts, the State believes that this SIP revision assures reasonable progress toward meeting the National visibility goal as it relates to Hayden Station and MZWA. It should be noted that the State recognizes 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.

Finally, as noted above, the USFS has concluded that the emissions reductions reflected in this SIP revision should effectively address concerns of visibility impairment in MZWA associated with Hayden Station.

ii. 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. These six factors are as follows: (1) Emission reductions due to ongoing air pollution control programs; (2) additional emission limitations and schedules for compliance; (3) measures to mitigate the impacts of construction activities; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes; and (6) enforceability of emission limitations and control measures. Because this long-term strategy SIP revision is focused entirely on the Hayden Station requirements that resulted from a

[9] EPA believes that emissions reductions will actually be more than 82%. The mass emissions limits for the 90 day averaging period represent an 85% reduction from the average sulfur content in coal utilized at Hayden Station.

[10] It should be noted that current Hayden Station emissions are not expected to contribute to visibility impairment under all meteorological conditions.

negotiated settlement, the State concluded that factors (1), (4), and (5) are not applicable. These factors will be considered in Part II of the long-term strategy review/revision process that the State has committed to complete by the end of the year. For a detailed discussion of the remaining factors as they relate to Hayden Station, please refer to Colorado's long-term strategy revision, which is available at the addresses listed in the beginning of this document.

3. Additional Requirements

a. FLM Consultation

As required under State and Federal regulations (Colorado Air Quality Control Commission Regulation No. 3, Section XV.F.; 40 CFR 51.306(c)), the State prepared and distributed a FLM Comment Draft of its long-term strategy review/revision to the USFS and the National Park Service. These agencies are the FLMs of all of Colorado's Class I areas. The State addressed all comments received.

b. SIP Enforceability

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541).

The specific emissions limitations contained in this August 15, 1996 revision to the SIP are addressed above in Section II.A.2.a., ''Part C of Section VI: Provisions from the Hayden Consent Decree.'' By adopting emission limitations for Hayden Station into the Visibility SIP on August 15, 1996, the limitations became enforceable by the State. C.R.S. 25–7–115. Enforceability of emission limitations is enhanced by the inclusion in this SIP revision of Consent Decree Sections VI., Continuous Emission Monitors (for SO_2 and opacity), and IX., Reporting, to ensure determination of compliance through reliable and valid measurements and to ensure accurate and adequate data reporting. Further, should EPA finalize this proposed approval of the SIP revision, the emission limitations also will be federally enforceable.

Consistent with section 110(a)(2)(A) of the CAA, the State of Colorado has a program that will ensure that the measures contained in the SIP are adequately enforced. The Colorado APCD has the authority to implement and enforce all control measures adopted by the AQCC. C.R.S. 25–7–111. In addition, Colorado statute provides that the APCD shall enforce against any ''person'' who violates the emission control regulations of the AQCC, the requirements of the SIP, or the requirements of any permit. C.R.S. 25–7–115. Civil penalties of up to $15,000 per day per violation are provided for in the State statute for any person in violation of these requirements (C.R.S. 25–7–122), and criminal penalties are also provided for in the State statute. C.R.S. 25–7–122.1.

Thus, EPA believes that the control measures contained in the revision to the Long-Term Strategy for Colorado's Class I Visibility Protection, Part I: Hayden Station Requirements, are enforceable and that the APCD has adequate enforcement capabilities to ensure compliance with those control measures.

III. Proposed 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 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 proposing to approve this revision, which includes the incorporation of certain requirements from the Hayden Consent Decree.

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.

IV. Request for Public Comments

EPA is requesting comments on all aspects of this proposal. As indicated at the outset of this document, EPA will consider any comments received by November 4, 1996.

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.

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

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: September 24, 1996.

Patricia D. Hull,

Acting Regional Administrator.

[FR Doc. 96–25399 Filed 10–2–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2760

RIN 1004–AC91

Reclamation Projects, Grant of Lands in Reclamation Townsites for School Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes the removal 43 CFR part 2760 in its entirety. This action is being undertaken because the regulations consist of outdated material and statutory recitations, and these subparts can be removed without any significant effect.

DATES: Any comments must be received by Bureau of Land Management (BLM) at the address below on or before December 2, 1996. Comments received which are postmarked after the above date will not necessarily be considered in the decisionmaking process on the final rule.

ADDRESSES: If you wish to comment, you may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. You also may transmit comments electronically via the Internet to WOComment@WO0033wp.wo.blm.gov. Please include ''attn: RIN 1004AC91'' in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly during regular business hours. You will be able to review comments at BLM's Regulatory Management Team office, Room 401, 1620 L St., NW., Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren, Bureau of Land Management, Realty Use Group, at 202–452–7779.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment addresses. BLM may not necessarily consider or include in the Administrative Record for the rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background and Discussion of Proposed Rule

The existing regulations at 43 CFR part 2760 were created for BLM to assist the Bureau of Reclamation in disposing of lands through public sale or grants to townsites for school purposes. BLM proposes to remove these regulations because they contain no applicable, substantive provisions beyond what is already in the statutes.

Subpart 2764 consists entirely of unnecessary material. Sections 2764.1 and 2764.3 concern procedures the Commissioner of Reclamation must follow when appraising and selling the lots at issue. These provisions are derived from 43 U. S.C. 561–573, and serve the informational purpose of informing the public of the role assumed by the Bureau of Reclamation in this program. However, the regulations are redundant, and BLM regulations cannot bind the Bureau of Reclamation; therefore, these two sections have no substantive effect. The remaining sections of subpart 2764 are direct recitations of statutory language: section 2764.2 repeats 43 U.S.C. 564–565, and section 2764.4 largely repeats 43 U.S.C. 566. Finally, the last sentence of section 2764.4, the part which does not merely repeat the statute, is outdated, as evidenced by its reference to a CFR section that no longer exists.

Subpart 2765 consists of the filing procedures school districts must follow when applying for a land grant for school purposes. These regulations elaborate on the statutory provisions at 43 U.S.C. § 570 authorizing the Secretary of the Interior to grant school districts up to six acres from a reclamation townsite. However, BLM wishes to remove these regulations to give itself and the Bureau of Reclamation added flexibility in processing the rare application for a school grant. Rather than requiring the school district to submit the lengthy requirements currently contained in section 2765. 1, BLM would only ask that an application be submitted which complies with any Bureau of Reclamation requirements and is otherwise adequate to inform BLM of its request. The substantive provisions currently contained in subpart 2765, such as the reversion held by the United States in the event the land is used for purposes other than a school, are entirely contained in the statute at § 570.

III. Procedural Matters

National Environmental Policy Act

BLM has determined that because this proposed rule only eliminates provisions that have no impact on the public and no continued legal relevance, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1. 10. In addition, this action does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C.3501 et seq.

Regulatory Flexibility

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 et seq., to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a