DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 236–2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act System of records for subsections (c)(3), and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g) of the Privacy act, 5 U.S.C. 552a. This system of records is maintained by the Immigration and Naturalization Service (INS) and is entitled ''National Automated Immigration Lookout System (NAILS), JUSTICE/INS–032.''

The NAILS system facilitates INS in its inspection and investigation process. The automated system provides quick and easy retrieval of biographical or case data on persons who may be either inadmissible to the United States, or of interest to other Federal agencies.

The exemptions are necessary to avoid interference with law enforcement operations. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory or other law enforcement process such as, deportation/removal proceedings.

EFFECTIVE DATE: This final rule is effective July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Cahill—(202) 307–1823.

SUPPLEMENTARY INFORMATION: On April 4, 2001 (66 FR 17828) a proposed rule was published in the **Federal Register** with an invitation to comment. The INS accepted three comments on the proposed rule from interested parties on or before April 13, 2001. One commenter expressed support for the proposed rule. Two commenters believed that exceptions were being made to the Privacy Act. No exceptions were being made to the Privacy Act. As in the proposed rule, the final rule specifically states that exemptions will apply only to the extent that information in the system is subject to exemption. The INS cited the same exemptions for law enforcement records as any other agency that has law enforcement functions. The exemptions are warranted and do not make exceptions that may violate the Privacy Act.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act 5 U.S.C. 601–612, it is hereby stated that the order will not have ''a significant economic impact on a substantial number of small entities.''

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, Title 28 of the Code of Federal Regulations, part 16 is amended as set forth below.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717.

2. 28 CFR 16.99 is amended by adding paragraph (a)(3) to read as follows:

§ 16.99 Exemption of the Immigration and Naturalization Service System-limited access.

* * * * *

(a) * * *

(3) The Immigration and Naturalization Service ''National Automated Immigration Lookout System (NAILS) JUSTICE/INS–032.'' The exemptions apply only to the extent that records in the system are subject to exemptions pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

* * * * *

Dated: June 21, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–16824 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0055; FRL–7005–8]

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: Craig 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 III of the document entitled ''Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements,'' as submitted by the Governor with a letter dated June 7, 2001. The revision will incorporate into the SIP emissions reduction requirements for the Craig Station (a coal-fired steam generating plant located near the town of Craig, Colorado). EPA is approving the SIP revision, which is expected to remedy Craig 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 May 1, 2001, 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 letter of supportive comments regarding the proposed revision and is finalizing the proposal without modification.

EFFECTIVE DATE: This action is effective August 6, 2001.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air and Radiation Programs, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, 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, DC 20460.

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

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' are used it means the Environmental Protection Agency.

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

[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

''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. 7410(a)(2)(J), similarly requires SIPs to meet the visibility protection requirements of the CAA.

We 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 51.300–51.307). 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), we 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). We 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. 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. We approved this SIP revision in the August 12, 1988 **Federal Register** (53 FR 30428), and this revision replaced the Federal plans and regulations in the Colorado Visibility SIP.

The Governor of Colorado submitted subsequent SIP revisions for visibility protection with letters dated November 18, 1992, August 23, 1996, and August 19, 1998. These revisions were made to fulfill the requirements to periodically review and, as appropriate, revise the long-term strategy for visibility protection. We approved the first two long-term strategy revisions on October 11, 1994 (59 FR 51376), and January 16, 1997 (62 FR 2305), respectively. The 1998 revisions will be addressed at a later date.

After 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 was addressed in the State's 1996 long-term strategy review and revision (see 62 FR 2305, January 16, 1997).

Craig Station, which is the focus of this SIP revision, is located 40 miles upwind from MZWA. The facility consists of three units, but only Units 1 and 2 are subject to this action. Unit 1 is a 428 megawatt steam generating unit that commenced commercial operation in 1980 and Unit 2 is a 428 megawatt steam generating unit that commenced commercial operation in 1979. The existing emission control equipment on Units 1 and 2 consists of the following: wet scrubbers to control sulfur dioxide (SO_2) (currently achieve 65% SO_2 removal), electro-static precipitators to control particulate pollution, and low nitrogen oxides (NO_X) burners to control NO_X emissions. The 1999 emissions inventory for Craig Station Units 1 and 2, as reported to EPA's Acid Rain database, indicated that these units emitted 9,216 tons of SO_2 and 12,501 tons of NO_X. Particulate emissions have been more difficult to estimate since continuous emissions rate data is not available.

On October 9, 1996, Sierra Club, Inc. (''Sierra Club'') sued the owners of the Craig Station in United States District Court, alleging numerous violations of State and Federal opacity standards from 1991–1996. In the Fall of 1996, the State, Craig Station owners, and EPA initiated a joint study to develop information on SO_2 emission reduction options and associated costs for Craig Station Units 1 and 2. This joint study, referred to as the ''Craig Flue Gas Desulfurization Study (Craig FGD Study),'' was viewed as a means to move the parties to a negotiated resolution of Craig Station's contribution to visibility impairment in MZWA, and if negotiations failed, as a possible basis for a Best Available Retrofit Technology (BART) determination under State and EPA visibility regulations. The Craig FGD Study was completed on August 31, 1999.

The Craig FGD Study identified several options, at reasonable costs, for addressing Craig Station's contribution to visibility impairment at MZWA. This information and the results of other technical analyses led us, on September 22, 1999, to call for a revision to the Colorado Visibility SIP to resolve the long outstanding certification of visibility impairment for MZWA with respect to Craig Station (see 64 FR 54010, October 5, 1999). The State was given 12 months to revise the SIP accordingly.

In October 1999, the Sierra Club, the Colorado Air Pollution Control Division (APCD), EPA, USFS, and the Craig 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.

On October 17, 2000, the Sierra Club and owners of Craig Station reached an agreement in principle to resolve the Sierra Club lawsuit. Sierra Club and the Craig Station owners subsequently negotiated and signed a consent decree that they filed with the United States District Court for the District of Colorado on January 10, 2001 (Civil Action No. 96–N–2368) (referred to hereafter as ''Craig Consent Decree'' or ''Consent Decree.'') The Court entered the Consent Decree on March 19, 2001.

The Consent Decree resolves the Sierra Club complaint regarding opacity violations and also requires substantial reductions in air pollutants that are intended to resolve Craig Station's contribution to visibility impairment in MZWA. The Consent Decree contemplates that its requirements will be incorporated into the Colorado SIP. Although we were not involved in the direct negotiations between Sierra Club and the Craig Station owners regarding the terms of the Consent Decree, during negotiations Sierra Club and the Craig Station owners sought, and we provided, our input regarding terms of

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acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) of the Act (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).

the settlement. In particular, in a December 20, 2000 letter, we commented on a final draft of the Consent Decree and gave our preliminary views of the settlement with respect to the SO_2 limits for Craig Station. We made clear that only through our public rulemaking process would we reach final judgment regarding a Visibility SIP revision based on the Consent Decree. This final rulemaking is the last step in that public rulemaking process. The Sierra Club and Craig Station owners also asked the State, USFS, and National Park Service to provide input on the Consent Decree during the negotiations of the final agreement.

On May 1, 2001, we announced our proposed approval of proposed revisions to the long-term strategy portion of Colorado's SIP for Class I Visibility Protection, contained in section III of the document entitled ''Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements,'' dated February 1, 2001. We based our proposed approval on a February 20, 2001 letter to EPA from Governor Bill Owens requesting that we ''parallel process'' the State's proposed revision. In that proposed rulemaking action, we described in detail our rationale for proposing approval. As indicated in that action, we based our proposed approval on our understanding that the State would make two minor changes to the February 1, 2001 proposed SIP revisions before final adoption. The April 19, 2001 SIP revision that the State adopted and which we are approving with this action, includes the two minor changes we described in our proposed approval. The public should review the notice of proposed rulemaking for further background on this final rulemaking action.

We requested public comments on the proposal (see 66 FR 21721). We received one letter of supportive comments regarding the proposed revision, and are finalizing our approval with this action.

II. Revision Submitted June 7, 2001

With a letter dated June 7, 2001, the Governor of Colorado submitted the revision to the long-term strategy portion of Colorado's SIP for Visibility Protection that the State finally adopted on April 19, 2001. This revision is contained in Section III of the April 19, 2001 document entitled ''Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements.'' The revision was made to fulfill, with respect to Craig Station's contribution to visibility impairment in MZWA, the Federal and Colorado requirements to revise the long-term strategy to include emission limitations and schedules for compliance necessary to demonstrate reasonable progress toward the National visibility goal.[3] Among other things, the SIP revision incorporates provisions of the Craig Consent Decree that require the owners of Craig Station to install control equipment and meet stringent emission limitations for particulates (including opacity), NO_X and SO_2.

A. Analysis of State's Revision

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.

On April 19, 2001, the Colorado Air Quality Control Commission (AQCC), after providing adequate notice, held a public hearing to consider the revisions to the Long-term Strategy of the Visibility SIP and subsequently adopted the revisions.

2. Content of SIP Revision

The SIP revision is contained in section III of the submittal entitled ''Revision of Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements,'' dated April 19, 2001. Only Section III contains provisions that are enforceable against the Craig Station owners. Part III incorporates relevant portions of the Craig 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. *Section III: Enforceable Portion of the Proposed SIP Revision:*

Craig Station Units 1 and 2 Requirements. The State incorporated into its Visibility SIP revision provisions of the Craig Consent Decree including Definitions, Emission Controls and Limitations, Continuous Emission Monitors, Construction Schedule, Emission Limitation Compliance Deadlines, and Reporting. Such provisions must be met by the Craig Station owners and are enforceable. The Consent Decree numbering scheme was retained to avoid confusion between the SIP and the Consent Decree, but only the Consent Decree's emission controls and limitations, construction schedule, and sections necessary to ensure enforceability of these requirements were included in 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 Craig Consent Decree are summarized below.

SO_2 Emission Limitations—Craig Units 1 and 2 will be designed to meet at least a 93.7% SO_2 removal rate. The Craig Station owners must design, construct and operate FGD upgrades and related equipment to reliably treat 100% of the flue gas and to meet the following emissions limitations:

—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 a 90% reduction of SO_2 on a 90 boiler operating day rolling average basis, unless Craig Station owners show this limit cannot be met, in which case an alternative limit shall be established, not to be less than an 85% reduction of SO_2 on a 30 boiler operating day average or 86% on a 90 boiler operating day average;[4] 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.

Particulate Emission Limitations—The Craig Station owners must install and operate a Fabric Filter Dust Collector (known as a baghouse or FFDC) on Craig Units 1 and 2. Particulate emission limitations for each unit are:

[3] This revision is specific to requirements for Craig Station and does not constitute the State's three year review of the components of the Long-term Strategy, as required by 40 CFR 51.306(c). That review and report are not due from the State until September 2001, at which time the public will be able to review and comment on the State's full Long-term Strategy.

[4] Any changes made to the percentage reduction requirement will be made pursuant to the requirements of the Consent Decree, and if the ultimate percentage reduction requirement changes from 90%, the State has indicated that it would report the changes in its next long-term strategy review. We would provide an information notice on any such changes as well.

—No more than 0.03 lbs of 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.

NO_X Emissions Limitations—NO_X reductions are to be achieved through the requirement to install ''state-of-the-art'' low-NO_X burners utilizing two-stage combustion with supplemental over-fire air systems. The emissions limitations on each of Craig Station Units 1 and 2 are:

—No more than 0.30 lbs per million Btu heat input on a calendar year annual average basis.

Compliance With Emissions Limits—All required controls must be designed to meet enforceable emission limits. Compliance with the emission limits shall be determined by continuous emission monitors. Compliance with the percentage reduction requirement for SO_2 shall be determined by comparing SO_2 emissions from the stack (measured by continuous emissions monitors—''CEMs'') to potential SO_2 emissions from coal combusted (determined through coal sampling and analysis).

Construction Schedule—The final deadlines for constructing control equipment are as follows:

Unit 1—Completion of construction and initiation of start-up of all upgrades by 12/31/03.

Unit 2—Completion of construction and initiation of start-up of all upgrades by 6/30/04.

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

SO_2—For Unit 1, within 180 days after completion of construction of the additional SO_2 control equipment, or by June 30, 2004, whichever date is earlier, except for 90% SO_2 reduction, which must be achieved within 270 days of the above compliance date, but no later than March 31, 2005.

—For Unit 2, within 180 days after completion of construction of the additional SO_2 control equipment, or by December 31, 2004, whichever date is earlier, except for 90% SO_2 reduction, which must be achieved within 270 days of the above compliance date, but no later than September 30, 2005.

Particulates

—For Unit 1, within 180 days after completion of construction of baghouse system, or by April 30, 2004, whichever date is earlier.
—For Unit 2, within 180 days after completion of construction of baghouse system, or by October 31, 2004, whichever date is earlier.

NO_X

—June 30, 2004 for Unit 1 and December 31, 2004 for Unit 2.

These construction deadlines and emission limitation compliance deadlines are subject to the ''force majeure'' provisions of the Consent Decree, which have been included in the 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 Craig Station owners.

To help ensure that reasonable progress continues to be made, the State commits in the SIP revision to reopen the SIP (with public notice and hearing) 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, and to ensure that the emission limitations are met. In addition, the SIP revision 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 revision should assure reasonable progress toward the National visibility goal. If deadlines extend more than twelve months, we expect the State to revise the SIP.

b. *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. 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 Craig Station owners have agreed in the context of a judicially-enforceable Consent Decree to meet emissions limitations that are expected to reduce Craig 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 believes that the measures assure reasonable progress by remedying Craig Station's contribution to perceptible visibility impairment in MZWA and has adopted a Visibility SIP revision containing these measures.

Further, in a December 14, 2000 letter from Tom Thompson, USFS, Rocky Mountain Region, to Margie Perkins, APCD, the USFS concluded that ''the proposed reductions of both sulfur dioxide and nitrogen oxides will resolve all Forest Service issues relative to the Craig Station and our 1993 Certification of Impairment.'' Based in part on this letter, the State believes that the pertinent provisions of the Craig Consent Decree, as embodied in the SIP revision, effectively resolve the USFS certification of impairment in MZWA in relation to Craig Station.

We have reviewed the State's SIP revision and supporting information in light of the statutory and regulatory requirements and approve it. The State adequately addressed our concerns by making the two minor changes to the finally adopted SIP revision that we described in our proposed approval (see 66 FR 21721, 21724, May 1, 2001).

We agree with the State that the emission reduction measures at Craig Station required by the Consent Decree and contained in the Visibility SIP revision will remedy Craig 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 April 19, 2001 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. For a summary of the State's analysis,

please see our notice of proposed rulemaking (66 FR 21721, May 1, 2001). We agree with the State that the SIP revision will assure reasonable progress in remedying Craig Station's contribution to visibility impairment in MZWA. In particular, we note that the enhanced FGD control systems will lower Craig Station Units 1 and 2's combined SO_2 emissions to a total of approximately 2,600 tons per year from the current level of over 9,300 tons per year. This emissions reduction should effectively address visibility problems in MZWA caused by SO_2 from Craig Units 1 and 2 and lower the threshold of SO_2 emissions from the units to below perceptible levels in MZWA.

c. *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 May 1, 2001 notice of proposed rulemaking (66 FR 21721) for a discussion of these six factors.

3. 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 our May 1, 2001 notice of proposed rulemaking (66 FR 21721) for a discussion of these requirements.

III. Public Comments and EPA Responses

EPA received only one set of comments—from the Rocky Mountain Chapter of the Sierra Club. Several of their comments were not relevant to this action, and we will not respond to them here. A summary of their remaining comments, and EPA's responses, is provided below.

Comment: The Sierra Club fully supports EPA's proposed approval of Colorado's Visibility SIP revision regarding the Craig Station. The Sierra Club believes that as long as the owners of the Craig Station comply with the requirements of the Craig Consent Decree, Craig Station's contribution to visibility impairment in MZWA will be appropriately resolved.

Response: EPA notes the Sierra Club's support for the proposed action and agrees that compliance with the Consent Decree requirements should adequately resolve Craig Station's contribution to visibility impairment in MZWA.

Comment: The Sierra Club notes that the Craig Consent Decree does not purport to resolve Craig Station's responsibilities under EPA's regional haze regulations, and no regional haze resolution should be accepted by EPA.

Response: There is nothing in the State's Visibility SIP revision intended to resolve regional haze requirements related to Craig Station or any other sources, and EPA's approval of the revision is not intended in any way to relieve the State of its responsibilities under the regional haze program regarding Craig Station. We expect the State to submit another Visibility SIP revision to address regional haze requirements, and we will assess the adequacy of that submittal at that time through notice and comment rulemaking.

IV. Final Action

We have 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 III of the April 19, 2001 document entitled ''Revision of Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements,'' as submitted by the Governor with a letter dated June 7, 2001. We are approving the revision, which includes the incorporation of certain requirements from the Craig 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.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 6, 2001.

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 September 4, 2001. 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 may 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, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 21, 2001.

Carol Rushin,

Acting Regional Administrator, Region 8.

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)(93) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(93) On June 7, 2001, 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 emissions reduction requirements for the Craig Station (a coal-fired steam generating plant located near the town of Craig, Colorado). This SIP revision is expected to remedy Craig Station's contribution to visibility impairment in the Mt. Zirkel Wilderness Area.

(i) Incorporation by reference.

(A) Revision of Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements, Section III, effective on April 19, 2001.

[FR Doc. 01–16689 Filed 7–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH–FRL–6999–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Spent Catalysts from Dual-Purpose Petroleum Hydroprocessing Reactors

AGENCY: Environmental Protection Agency.

ACTION: Notice of opportunity for public comment on memoranda clarifying the scope of petroleum hazardous waste listings.

SUMMARY: The Environmental Protection Agency (EPA) today is providing the public an opportunity to comment on Agency memoranda that explain how current RCRA regulations apply to spent catalyst wastes removed from dual purpose hydroprocessing reactors and generated at petroleum refining facilities. The regulations addressed in these memoranda were promulgated under the Resource Conservation and Recovery Act (RCRA) on August 6, 1998 (63 FR 42110) and among other things, listed spent hydrotreating catalysts (K171) and spent hydrorefining catalysts (K172) as hazardous wastes. Subsequent to that final rule and in response to inquiries from handlers of certain spent petroleum hydroprocessing catalysts, EPA issued two memoranda explaining that spent catalysts from dual purpose petroleum hydroprocessing reactors fall within the scope of the final listing determinations for K171 and K172. Today the Agency is notifying the public of the opportunity to comment on these previously issued memoranda.

DATES: EPA will accept public comments until September 4, 2001. Comments postmarked after this date will be marked ''late'' and may not be considered.

ADDRESSES: If you wish to comment on the memoranda discussed below, you must send an original and two copies of your comments referencing docket number F–2001–PR2P–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Ariel Rios, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address listed in the **SUPPLEMENTARY INFORMATION.** You also may submit comments electronically by sending electronic mail through the Internet to: *rcradocket@epamail.epa.gov.* See the beginning of **SUPPLEMENTARY INFORMATION** for instructions on electronic submissions.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA Ariel Rios, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

FOR FURTHER INFORMATION: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–3323. For information on specific aspects of the information contained in the memoranda discussed below, contact Patricia Overmeyer of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency Ariel Rios, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (E-mail address and telephone number: *Overmeyer.patricia@epa.gov,* (703) 605–0708.)

SUPPLEMENTARY INFORMATION: You should identify comments in electronic format with the docket number F–2001–PR2P–FFFFF. You must submit all electronic comments as an ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Some of the supporting documents in the docket also are available in electronic format on the Internet at URL: *http://www.epa.gov/epaoswer/hazwaste/id/petroleum/catalyst.htm*

EPA will keep the official record for this action in paper form. Accordingly, we will transfer all comments received electronically into paper form and place