

IV. This Action

USEPA approves the plan revisions submitted on November 15, 1992, January 15, 1993, July 28, 1993 and January 14, 1994, to implement the new source review provisions of part D and Operating Permits program. Each of the program elements mentioned above were properly addressed. This rule will become effective on February 17, 1995. However, if we receive notice by February 17, 1995, that someone wishes to submit adverse comments, then USEPA will publish: (1) A document that withdraws the action, and (2) a document that begins a new rulemaking by proposing the action and establishing a comment period. USEPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register**, USEPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 17, 1995, unless, within 30 days of its publication, adverse or critical comments are received.

If USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 17, 1995.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). The OMB has exempted this action from review under Executive Order 12866.

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

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), USEPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines

"significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted this regulatory action from E.O. 12866 review.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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. Alternately, USEPA 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.

SIP approvals 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 regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The ACT forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976).

List of Subjects in 40 CFR Part 52

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

Dated: December 16, 1994.

Valdas V. Adamkus,
Regional Administrator.

For the reasons set out in the preamble, part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraphs (c) (75) and (76) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(75) On November 15, 1992, January 15, 1993, July 28, 1993, and January 14, 1994 the State of Wisconsin submitted emergency and permanent rules for issuance of New Source Review permits for new and modified air pollution sources in nonattainment areas, as required by section 182(a)(2)(c) of the Clean Air Act. The emergency rules have now been superseded by the permanent rules to clarify and specify the NSR requirements that sources must meet under the Clean Air Act. Also submitted were portions of 1991 Wisconsin Act 302.

(i) Incorporation by reference.

(A) NR 400—Wisconsin Administrative Code, Air Pollution Control, Effective date January 1, 1994.

(B) NR 406—Wisconsin Administrative Code, Construction Permits, Effective date January 1, 1994.

(C) NR 408—Wisconsin Administrative Code, Nonattainment Area Major Source Permits, Effective date June 1, 1993.

(D) NR 490—Wisconsin Administrative Code, Procedures for Noncontested Case Public Hearings, Effective date January 1, 1994.

(E) Section 144.30—91-92 Wisconsin Statutes. Effective date May 14, 1992.

(F) Section 144.391—91-92 Wisconsin Statutes. Effective date May 14, 1992.

(G) Section 144.392—Construction permit application and review, 91-92 Wisconsin Statutes. Effective date May 14, 1992.

(H) Section 144.393—91-92 Wisconsin Statutes. Effective date May 14, 1992.

(i) Section 144.394—Permit conditions, 91-92 Wisconsin Statutes. Effective date May 14, 1992.