On October 29, 1994, P & S filed a petition with the Illinois Pollution Control Board (IPCB) requesting a variance from meeting the November 1, 1994, compliance date on the grounds that requiring the facility to install Stage II vapor recovery equipment prior to the completion of the upgrading of the roadway and the relocation of the facility's tanks would cause an unreasonable financial hardship. The IPCB is charged under the Illinois Environmental Protection Act with the responsibility of granting variance from regulations issued by the Board whenever it is found that compliance with the regulations would impose an arbitrary or unreasonable hardship upon the petitioner for the variance.

On February 16, 1995, the IPCB granted a variance from Stage II compliance for P & S. The variance begins November 1, 1994 and expires on April 1, 1996, or 60 days after notification to P & S from the IDOT, or the developer of the shopping center, that the widening of the roadway will be abandoned for any reason, whichever is sooner. Given both the high additional cost associated with having to install Stage II equipment twice and the minimal impact on ozone air quality occasioned by temporary noncompliance before April 1, 1996, the IPCB found that requiring P & S to have installed Stage II equipment by November 1, 1994, does constitute an unreasonable hardship. Illinois submitted this variance as a revision to the Illinois ozone SIP on March 28, 1995.

Final Rulemaking Action

The USEPA is approving this SIP revision because the above argument that immediate compliance with the Stage II requirements will cause an unreasonable hardship to P & S is acceptable to USEPA, and that the uncontrolled emissions generated by P & S as a result of the variance will not contribute significantly to ozone formation, given that the variance will expire on or before April 1, 1996.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial amendment and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on September 11, 1995, unless adverse or critical comments are received by August 14, 1995.

If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw the approval before its effective date by publishing a subsequent rule that withdraws this final action. All public comments received will then be addressed in a subsequent action. Please be aware that USEPA will institute another rulemaking document on this action only if warranted by significant revision to the rulemaking based on any comments received in response to today's action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises that this action will be effective September 11, 1995.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

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 any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA 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, the USEPA 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 the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

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

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. Alternatively, USEPA 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.

The 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 small entities. 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 the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to a State, local and/or tribal government(s) in the aggregate. The USEPA must also develop a plan with regard to small governments that would be significantly or uniquely affected by the rule.

This rule applies only to a single private sector source located in the Chicago ozone nonattainment area. To the extent that the rules being promulgated by this action will impose any mandate upon this source, such a mandate will not result in estimated annual costs of $100 million or more to that source. The rule also does not impact any governments. Therefore, no action is required under the Unfunded Mandates Act.

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