approving South Carolina's FESCOP program so that South Carolina may issue Federally enforceable construction and operating permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes South Carolina's FESCOP program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, Federal Register document is met. That is to say, South Carolina's program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes South Carolina has demonstrated that it will provide for adequate resources to support the FESCOP program. EPA expects that resources will continue to be adequate to administer that portion of the State's minor source construction and operating permit program under which Federally enforceable construction and operating permits will be issued since South Carolina has administered a minor source construction and operating permit program for a number of years. EPA will monitor South Carolina's implementation of its FESCOP program to ensure that adequate resources are in fact available. EPA also believes that South Carolina's FESCOP program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in South Carolina's FESCOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes South Carolina's program is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as major sources by obtaining Federally enforceable limits on potential to emit.

Eligibility for Federally enforceable permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the State's current rule prior to the effective date of today's rulemaking. If the State followed its own regulation, each issued permit that established a title I condition (e.g., for a source to

have minor source potential to emit) was subject to public notice and prior EPA review.

Therefore, EPA will consider all such construction and operating permits which were issued in a manner consistent with both the State regulations and the five criteria as Federally enforceable upon the effective date of this action provided that any permits that the State wishes to make Federally enforceable are submitted to EPA and accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity with program requirements.

With South Carolina's addition of these provisions and EPA's approval of this revision into the SIP, South Carolina's FESCOP program satisfies the criteria described in the June 28, 1989, Federal Register document.

## Final Action

In this action, EPA is approving South Carolina's air permitting regulations as submitted on July 12, 1995. EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 9, 1996 unless, within 30 days of its publication, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document 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. EPA 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 9, 1996.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1996. Filing a petition for reconsideration by

the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607 (b)(2).)

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.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a 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.

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 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 Actions

SIP approvals under 110 and subchapter I, Part D of the CAA 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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).