

**SUMMARY:** This action amends existing Class E Airspace in the vicinity of Rochester, NY, to provide additional controlled airspace to increase the effective utilization of airspace by air traffic control in this vicinity.

**EFFECTIVE DATE:** 0901 U.T.C.; March 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Frank Jordan, Designated Airspace Specialist, System Management Branch AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

**SUPPLEMENTARY INFORMATION:**

**History**

On July 30, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Class E Airspace (formerly Transition Area) in the vicinity of Rochester, NY (58 FR 43576). The proposal would increase that amount of controlled airspace needed by the FAA for aircraft operating under instrument flight rules.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "Transition Area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. Except for editorial changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations modifies Class E airspace in the vicinity of Rochester, NY, to provide additional controlled airspace deemed necessary by the FAA for aircraft operating under instrument flight rules.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

*Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth*

\* \* \* \* \*

**AEA NY E5 Rochester, NY [Revised]**

Greater Rochester International Airport, NY  
(Lat. 43°07'08" N., long. 77°40'21" W.)

BREIT NDB

(Lat. 43°07'35" N., long. 77°33'14" W.)

Rochester VORTAC

(Lat. 43°07'15" N., long. 77°40'25" W.)

Geneseo VORTAC

(Lat. 42°50'04" N., long. 77°43'58" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Greater Rochester International Airport and within 3 miles each side of the Rochester localizer east course extending from the 7-mile radius to 10 miles east of the BREIT NDB and within 4 miles each side of the 135° bearing from the BREIT NDB extending from the 7-mile radius to 11.3 miles southeast of the NDB and within 3.5 miles each side of the Rochester VORTAC 214° radial extending

from the 7-mile radius to 9.2 miles southwest of the VORTAC and that airspace within a 20.5-mile radius of the Rochester VORTAC beginning clockwise from the Rochester VORTAC 189°(T) 198°(M) and Geneseo VORTAC 195°(T) 204°(M) radials, extending clockwise along the 20.5-mile radius to the Rochester VORTAC 279°(T) 288°(M) radial.

\* \* \* \* \*

Issued in Jamaica, New York, on December 29, 1994.

**John S. Walker,**

*Manager, Air Traffic Division.*

[FR Doc. 95-1140 Filed 1-17-95; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[WI33-01-5764a; FRL-5135-2]

**Approval and Promulgation of Implementation Plan for Wisconsin**

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** USEPA approves the State implementation plan (SIP) revisions submitted by the State of Wisconsin for the purpose of meeting requirements of the Clean Air Act (ACT) with regard to new source review in areas that have not attained the national ambient air quality standards (NAAQS). The implementation plan revisions were submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP for Wisconsin.

This action also approves Wisconsin's Operating Permits rule as satisfying the requirements given in the **Federal Register** of June 28, 1989, for establishing federally enforceable State operating permits (FESOP). USEPA is approving Wisconsin's operating permits program for the purpose of creating federally enforceable limitations on the potential to emit of certain pollutants, including those regulated under sections 110, 111, and 112 of the Clean Air Act.

**DATES:** This action will be effective February 17, 1995, unless adverse or critical comments are received by February 17, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments can be mailed to Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch, United States Environmental Protection Agency, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604.

Copies of the State's submittal and USEPA's technical support documents are available for inspection during normal business hours at the following locations:

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604; and

Wisconsin Department of Natural Resources, 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707.

A copy of this SIP revision is also available at the following location:

Office of Air and Radiation, Docket and Information Center (Air Docket 6102), room M1500, USEPA, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Constantine Blathras, USEPA (AT-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The air quality planning requirements for nonattainment new source review are set out in part D of subchapter I of the ACT. USEPA issued a "General Preamble" describing USEPA's preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area new source review (NSR) SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this action and the supporting rationale.

##### **II. The Wisconsin New Source Review Rules**

Section 110(k) of the ACT sets out provisions governing USEPA's review of SIP submittals (see 57 FR 13565-13566).

###### *A. Analysis of State Submission*

###### **1. Submittal Information**

Wisconsin's initial NSR plan in response to the 1990 Amendments to the ACT was submitted to USEPA on November 15, 1992 as a proposed revision to the SIP. This submittal consisted of a set of statutory changes, and a temporary rule which was in effect for 180 days from November 15, 1992 and a draft of a permanent rule. The State of Wisconsin held a public hearing on December 1, 1992 to entertain public comment on this submittal. On January 15, 1993,

Wisconsin submitted materials related to the public comments it received. On July 28, 1993, Wisconsin submitted its permanent NSR rule, Natural Resources (NR) 408, Wisconsin Administrative Code, Nonattainment Area Major Source Permits superseding the temporary rule previously submitted. On January 14, 1994, Wisconsin submitted changes and revisions to NR 400, Air Pollution Control Definitions, NR 406, Construction Permits, and NR 490, Procedures for Noncontested Case Public Hearings. USEPA is approving statutory changes as well as NR 400, 406, 408, and 490. These are discussed further as follows and in the technical support documents for this SIP revision.

USEPA reviewed the November 15, 1992 and July 28, 1993 SIP revision submittals to determine completeness, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). These submittals were found to be complete on August 31, 1993, and USEPA forwarded a letter dated August 31, 1993 to the Wisconsin Department of Natural Resources (WDNR) Bureau of Air Management Director indicating the completeness of the submittals and the next steps to be taken in the review process.

###### **2. General Nonattainment NSR Requirements**

The statutory requirements for nonattainment new source review SIPs and permitting are found at sections 172 and 173. A listing of these provisions and how Wisconsin's rules meet them follows.

a. Provisions to assure that new source growth does not interfere with reasonable further progress (RFP) for the area and that calculation of emissions offsets are based on the same emissions baseline used in the demonstration of RFP. Wisconsin has met this requirement in NR 408.05 and NR 408.06(f).

b. Provisions according to section 173(c)(1) to allow offsets to be obtained in another nonattainment area if: the area in which the offsets are obtained has an equal or higher nonattainment classification; and emissions from the nonattainment area in which the offsets are obtained contribute to a NAAQS violation in the area in which the source would construct. Wisconsin has met this requirement in NR 408.06(2).

c. Provisions to assure, pursuant to section 173(c)(1), that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source are in effect and enforceable by the time the new or

modified source is to commence operation. Wisconsin has met this requirement in NR 408.06(g).

d. Provisions to assure that emissions increases from new or modified major stationary sources are offset by reductions in actual emissions as required by section 173(c)(1). Wisconsin has met this requirement in NR 408.06(3).

e. Provisions, pursuant to section 173(c)(2), to prevent emissions reductions otherwise required by the ACT from being credited for purposes of satisfying the part D offset requirements. Wisconsin has met this requirement in NR 408.06(1)(g) NR 408.06(9).

f. Provisions reflecting changes in growth allowances, pursuant to sections 172(c)(4), 173(a)(1)(B) and 173(b); specifically, the elimination of existing growth allowances in any nonattainment area that received a notice prior or subsequent to the Amendments that the SIP was substantially inadequate; and the restrictions of growth allowances to only those portions of nonattainment areas formally targeted as special zones for economic growth. Wisconsin does not have any growth allowances.

g. Provisions, pursuant to section 173(a)(5), that, as a prerequisite to issuing any part D permit, require an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. Wisconsin has met this requirement in NR 408.08(2).

h. Provisions for supplying control technology information from nonattainment new source review permits to USEPA for inclusion in the Reasonably Available Control Technology (RACT)/Best Available Control Technology (BACT)/Lowest Achievable Emission Rate (LAER) clearinghouse, pursuant to section 173(d). WDNR has met this requirement in NR 408.04(7) and has committed to report determinations to the RACT/BACT/LAER clearinghouse in the annual WDNR Air Management Program Workplan.

i. Provisions pursuant to section 173(e) that allow any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning, if the four conditions set forth therein are met. Wisconsin has no such sources or activities in the State.

j. Provisions, pursuant to section 819, Public Law 101-549 (note to 42 U.S.C. 7511) that effectively exempt activities related to stripper wells from the new NSR requirements of new Subparts 2, 3, and 4 for particulate matter (PM), ozone, or carbon monoxide (CO) nonattainment areas classified as serious or less, and having a population of less than 350,000. No exclusion is provided for PM, ozone, or CO serious nonattainment areas having a population of 350,000 or more, or in severe and extreme ozone nonattainment areas. The general NSR provisions of sections 172 and 173 of part D still apply. There are no stripper well activities in Wisconsin.

k. Provisions, pursuant to section 328, to assure that sources located on the outer continental shelf (OCS) are subject to the same requirements as would be applicable if the source were located in the corresponding onshore area. Wisconsin is not located on the OCS.

l. A definition of "stationary source" reflecting Congressional intent, as set forth in section 302(z), that certain internal combustion engines subject to control under State programs, but excluding the newly defined category of "nonroad engines". Wisconsin has met this requirement in NR 400.02(96) and section 144.30(23), 91-92 Wisconsin Statutes.

m. Exemptions from nonattainment new source review provisions, pursuant to section 415(b)(2), for installation, operation, cessation, or removal of a temporary clean coal technology demonstration project. Such projects must still comply with any applicable SIP and all other requirements for the attainment and maintenance of NAAQS. Wisconsin has met this requirement in NR 408.02(20)(e)(9).

n. Provisions, pursuant to section 173(a)(3), to assure that owners or operators of each proposed new or modified major stationary source demonstrate that all other major stationary sources under the same ownership in the State are in compliance, or on a schedule for compliance, with the Clean Air Act. Wisconsin has met this requirement in NR 408.08(1).

3. Ozone Nonattainment NSR Requirements

According to section 172(c)(5), SIPs must require permits for the construction and operation of new or modified major stationary sources. The statutory permit requirements for ozone nonattainment areas are generally contained in revised section 173, and in subpart 2 of part D. These are the minimum requirements that States must include in an approvable

implementation plan. For all classifications of ozone nonattainment areas and for ozone transport regions, States must adopt the appropriate major source thresholds and offset ratios, and must adopt provisions to ensure that any new or modified major stationary source of nitrogen oxides (NO<sub>x</sub>) satisfies the requirements applicable to any major source of volatile organic compounds (VOC), unless a special NO<sub>x</sub> exemption is granted by the Administrator under the provision of section 182(f). For serious and severe ozone nonattainment areas, State plans must implement section 182(c)(6) and may implement sections 182(c) (7) and (8) with regard to modifications.

Wisconsin has established major source thresholds, and offset ratios, and has included provisions for VOC and NO<sub>x</sub> major stationary sources as follows:

Area classification	Major source threshold	Offset ratio	NO <sub>x</sub> provisions
Marginal	100 tons per year.	1.1 to 1	Included.
Moderate	100 tons per year.	1.15 to 1	Included.
Serious ..	50 tons per year.	1.2 to 1	Included.
Severe ..	25 tons per year.	1.3 to 1	Included.
Extreme <sup>1</sup>	10 tons per year.	1.5 to 1	Included.

<sup>1</sup>Wisconsin does not have an extreme ozone nonattainment area.

In addition, Wisconsin's plan submittal reflects appropriate modification provisions under in sections 182(c), (d), and (e), for serious and severe areas. NR 408.02(2)(c) sets the major modification threshold level ("de minimis level") in serious and severe areas at 25 tons per year (tpy) where the creditable emissions increases and decreases from the proposed modification is aggregated with all other net emissions increases from the source over a 5 consecutive calendar year period prior to, and including, the year of modification.

NR 408.03(6) and NR 408.04(6) provide that in serious and severe areas, major modifications to existing sources that have a potential to emit of less than 100 tpy shall substitute best available control technology for lowest achievable emission rate (LAER) and may avoid major source status by internally offsetting the emissions increase by a ratio of 1.3 to 1.

NR 408.04(5) provides the major modifications to existing sources that have a potential to emit of greater than 100 tpy may avoid LAER requirements

by internally offsetting the emissions increase by a ratio of 1.3 to 1.

4. Carbon Monoxide Nonattainment NSR Requirements

The statutory permit requirements for CO nonattainment areas are generally contained in section 173, and in subpart 3 of part D. These are the minimum requirements that States must include in an approvable implementation plan. States must adopt the appropriate major source threshold and offset ratio.

Wisconsin has established a major source threshold of 100 tpy in NR 408.02(21)(a) for moderate CO nonattainment areas, a modification significance level of 100 tpy in NR 408.02(32)(a)1, and an offset ratio of 1 to 1 in NR 408.06(3).

5. PM Nonattainment NSR Requirements

The statutory permit requirements for PM nonattainment areas are generally contained in revised section 173, and in subpart 4 of part D. These are the minimum requirements that States must include in an approvable implementation plan. States must adopt the appropriate major source threshold, offset ratio, significance level for modifications, and provisions for PM precursors (such as SO<sub>2</sub>, NO<sub>x</sub>, and VOC).

Wisconsin has established major source thresholds in NR 408.02(21)(a), offset ratios in NR 408.06(3), modification significance levels in NR 408.02(32)(a)5, and PM precursor provisions in NR 408.02(21)(a & d), NR 408.02(32)(g & h), and NR 408.03(4) as follows:

Area classification	Major source threshold	Offset ratio	Sig-nificance level	Pre-cursor provisions
Mod-erate.	100 tpy	1 to 1	15 tpy	yes
Serious <sup>2</sup>	70 tpy ..	1 to 1	10 tpy	yes

<sup>2</sup>Wisconsin does not have a serious PM nonattainment area.

6. Sulfur Dioxide Nonattainment NSR Requirements

The statutory permit requirements for SO<sub>2</sub> nonattainment areas are generally contained in section 173, and in subpart 5 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For SO<sub>2</sub> nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

Wisconsin has established a major source threshold of 100 tpy in NR 408.02(21)(a), an offset ratio of 1 to 1 in

NR 408.06(3), and a modification significance level of 40 tpy in NR 408.02(32)(a)3.

#### 7. Lead Nonattainment NSR Requirements

The statutory permit requirements for lead nonattainment areas are generally contained in section 173, and in Subpart 5 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For lead nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

Wisconsin has established a major source threshold of 100 tpy NR in 408.02(21)(a), an offset ratio of 1 to 1 in NR 408.06(3), and a modification significance level of 0.6 tpy in NR 408.02(32)(a)6.

After consideration of the material submitted by the State of Wisconsin, USEPA has determined that the Wisconsin New Source Review rules revision satisfy the requirements for nonattainment new source review SIPs and permitting.

### III. The Wisconsin Operating Permit Program

For many years, Wisconsin has been issuing permits for major new sources and for major modifications of existing sources. Throughout this time, Wisconsin has also been issuing permits establishing limitations on the potential to emit from new sources so as to avoid major source permitting requirements. This latter type of permitting has been the subject of various guidance from the USEPA, including the memoranda entitled "Guidance on Limiting Potential to Emit in New Source Permitting" dated June 13, 1989, "Limitation of Potential to Emit with Respect to Title V Applicability Thresholds" dated September 18, 1992, and "Approaches to Creating Federally-Enforceable Emissions Limits" dated November 3, 1993.

The advent of operating permits pursuant to Title V of the ACT Amendments of 1990 has created interest in mechanisms for limiting sources' potential to emit, thereby allowing the sources to avoid being defined as "major" with respect to the Federal operating permits programs. A key mechanism for such limitations is the use of FESOPs. USEPA has issued guidance on FESOPs in the **Federal Register** of June 28, 1989 (54 FR 27274). Since operating permits are issued pursuant to a program approved by USEPA, these permits will also be enforceable by citizens pursuant to section 304 of the ACT.

On January 14, 1994, WDNR submitted the regulations, statutory changes, and administrative framework for the Operation Permits rule, NR 407, as a revision to its permit SIP. This SIP revision submittal is needed in order to make conditions in construction and operating permits federally enforceable and to create synthetic minor sources. USEPA is approving this program as meeting the five criteria articulated in the June 28, 1989 **Federal Register** notice for State operating permit programs to establish federally enforceable limits on potential to emit.

#### First Criterion

"The state operating permit program (i.e., the regulations or other administrative framework describing how such permits are issued) is submitted and approved by USEPA into the SIP."

On January 14, 1994, WDNR submitted the regulations and administrative framework for the Operation Permits rule, NR 407, as a revision to its permit SIP. USEPA's approval of this section provides legal support for the operating permit program and satisfies the first criterion.

#### Second Criterion

"The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provides that permits which do not conform to the operating permit program requirements and the requirements of USEPA's underlying regulations may be deemed not 'federally enforceable' by USEPA."

NR 407.09(1)(f)1 states that, "Any noncompliance with the operation permit constitutes a violation of the statutes and is grounds for enforcement action; for permit suspension, revocation or revision; or, if applicable under § 144.3925(6) Wisconsin Statutes, for denial of a permit renewal application." This satisfies the initial part of the second approval criterion in that the operating permit holder is considered in violation of the code if the holder does not abide by the permit conditions.

The latter part of the second approval criterion requires that the SIP have provisions which allow USEPA to deem a permit not "federally enforceable" under certain conditions. NR 400.02(39m) defines "federally enforceable" as "all limitations and conditions which are enforceable by the Administrator of the U.S. Environmental Protection Agency,

\* \* \* and requirements in operating permits issued pursuant to NR 407 and title V of the Federal clean air act which are designated as federally enforceable." Under NR 407.09(3), all terms and conditions in an operation permit, including any provisions designed to limit a stationary sources potential to emit, are enforceable by the Administrator under section 113(a) of the ACT. In approving the State operating permit, USEPA is determining that Wisconsin's program allows USEPA to deem an operating permit not "federally enforceable" for purposes of limiting potential to emit and to offset creditability. Such a determination will (1) be done according to appropriate procedures, and (2) be based upon the permit, permit approval procedures or permit requirements which do not conform with the operating permit program requirements and the requirements of USEPA's underlying regulations. Based on this interpretation of Wisconsin's program, USEPA finds that the second criterion for approving an operating permit program has been met by the State.

#### Third Criterion

"The State operating permit program requires that all emissions, limitations, controls and other requirements imposed by such permits, will be at least as stringent as any other applicable limitation or requirement contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitation or requirement contained in or issued pursuant to the SIP, or that are otherwise 'federally enforceable' (e.g., standards established under sections 111 and 112 of the Act)."

Under NR 407.09(3)(b), the department shall specifically designate as not federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act, under the Act's applicable requirements or under the SIP. This provision requires that State permits comply with the provisions of the ACT and Federal regulations adopted pursuant to the ACT. Based on these provisions, USEPA has determined that the State authority to grant permits is properly restrained by the terms of the SIP, as required by the third criterion.

#### Fourth Criterion

"The limitations, controls, and requirements in the operating permits are permanent, quantifiable and otherwise enforceable as a practical matter."

USEPA has reviewed the Wisconsin operating permit program and is

satisfied that it requires the State to issue permits which meet the requirements of this provision. While the permits do expire, the conditions they impose must be complied with during the entire term of the permit as well as during the transition to a renewal permit. NR 407.04(2) states that no permittee may continue operation of a source after the operation permit expires, unless the permittee submits a timely and complete application for renewal of the permit. Subsequently, NR 407.09(1)(f)1 requires the permittee to comply with all conditions of the permit provisions. The operating permit program provisions meet the fourth criterion for permit program approval.

#### *Fifth Criterion*

"The permits are issued subject to public participation." This means that the State agrees, as a part of its program, to provide USEPA and the public with timely notice of the proposed issuance of such permits, and to provide USEPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable.

Wisconsin's rules governing public participation in the air permit program for major sources in nonattainment areas are found in NR 407.07 and section 144.3925 of the 91-92 Wisconsin Statutes. These rules provide for public notification prior to permit issuance and an opportunity for public comment. The public comment procedure and commitments to follow them in issuing operating permits, which were submitted by the WDNR, are approvable as meeting the fifth criterion.

Wisconsin's operating permit regulation not only applies to criteria pollutants, but also to other air contaminants. Some of these are or will be regulated by sections 111 and 112 of the ACT. Thus, USEPA is also approving under section 112(l) of the ACT Wisconsin's State operating permits program for the purposes of creating federally enforceable limitations on the potential to emit Hazardous Air Pollutants (HAPs) regulated under section 112 of the ACT.

The June 28, 1989 document provided that USEPA would approve a State operating permit program into a SIP for the purpose of establishing federally enforceable limits on a source's potential to emit if the program met five specific requirements. This action, because it was written prior to the 1990 amendments to section 112, mainly addressed SIP programs to control criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOCs or PM) may have the incidental effect of

limiting certain HAPs listed pursuant to section 112(b). This situation would occur when a pollutant classified as a HAP is also classified as a criteria pollutant.<sup>3</sup>

USEPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** document and discussed above, are also appropriate for evaluating and approving the programs under Section 112(l). The June 28, 1989 document did not address HAPs because it was written prior to the 1990 amendments to section 112 and not because it established requirements unique to criteria pollutants. Hence, the five criteria are applicable to FESOP approvals under section 112(l).

In addition to meeting the criteria in the June 28, 1989 document, a FESOP program must meet the statutory criteria for approval under section 112(l)(5). section 112(l) allows USEPA to approve a program only if it (1) contains adequate authority to assure compliance with any Section 112 standards or requirements, (2) provides for adequate resources, (3) provides for an expeditious schedule for assuring compliance with section 112 requirements, and (4) is otherwise likely to satisfy the objectives of the Act.

USEPA plans to codify the approval criteria for programs limiting potential to emit HAPs in subpart E of part 63, the regulations promulgated to implement section 112(l) of the Act. USEPA currently anticipates that these criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989 document, with the addition that the State's authority must extend to HAPs in addition to pollutants such as VOCs and PM. USEPA currently anticipates that FESOP programs that are approved pursuant to section 112(l) prior to the subpart E revisions will have had to meet these criteria, and hence, will not be subject to any further approval action.

Regarding the statutory criteria under section 112(l), USEPA believes that Wisconsin's FESOP program contains authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989 document is met, since the program does not provide for waiving any section 112 requirement. Sources would still be required to meet section 112 requirements applicable to nonmajor sources. Regarding adequate resources,

<sup>3</sup>The USEPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

Wisconsin has included in its request for approval under section 112(l) a commitment to provide adequate resources to implement and enforce the program. Fees will be collected from FESOP sources through both the Title V and FESOP process. Sources applying through the FESOP program will be charged a fee based upon actual emissions. Because the processing of a FESOP permit consumes considerably less resources than the processing of a Title V permit, the State believes that sufficient resources will be available to administer FESOP permits for those who request and qualify. USEPA believes this mechanism will be sufficient to provide for adequate resources to implement this program, and will monitor the State's implementation of the program to assure that adequate resources continue to be available.

Wisconsin's FESOP program also meets the requirement for an expeditious schedule for assuring compliance. A source seeking a voluntary limit on potential to emit is probably doing so to avoid a Federal requirement applicable on a particular date. Nothing in this program would allow a source to avoid or delay compliance with the Federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, Wisconsin's FESOP program is consistent with the objectives of the section 112 program since its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. USEPA believes this purpose is consistent with the overall intent of section 112.

After consideration of the material submitted by the State of Wisconsin, USEPA has determined that the Wisconsin Operating Permit Program satisfies the five criteria needed to establish federal enforceability of State operating permits, published in the **Federal Register** on June 28, 1989 (54 FR 27274), and the four additional criteria of section 112(l) of the ACT. USEPA approves the incorporation of this program into the SIP for the purposes of issuing federally enforceable operating permits. Therefore, emissions limitations and other provisions contained in operating permits issued by the State in accordance with the applicable Wisconsin SIP provisions, approved herewith, shall be federally enforceable by USEPA, and by any person in the same manner as other requirements of the SIP.

#### 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.

(ii) Additional material.

(A) Wisconsin's Emergency NSR regulations. Effective date November 15, 1992.

(B) On December 12, 1994, Donald Theiler, Director, Bureau of Air Management, WDNR sent a letter to USEPA clarifying Wisconsin's interpretation of "any period of 5 consecutive years." Wisconsin interprets the term as referring to the five-year period including the calendar year in which the increase from the particular change will occur and the four immediately preceding years.

(76) On January 14, 1994, the State of Wisconsin submitted its rules for an Operating Permits program intended to satisfy federal requirements for issuing federally enforceable operating permits.

(i) Incorporation by reference.

(A) NR 407—Wisconsin Administrative Code, Operating Permits, Effective date January 1, 1994.

\* \* \* \* \*

[FR Doc. 95-1085 Filed 1-17-95; 8:45 am]

BILLING CODE 6560-50-P

## 40 CFR Part 52

[MN20-2-6751a; FRL-5135-7]

### Approval and Promulgation of Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** In this action, the United States Environmental Protection Agency (USEPA) is granting direct final approval of proposed revisions to Minnesota State Implementation Plan (SIP) for sulfur dioxide (SO<sub>2</sub>) for the St. Paul Park area of Air Quality Control Region 131. The revisions were contained in a formal submittal dated December 11, 1992, and a formal amendment submitted on September 30, 1994. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act.

**DATES:** This action will be effective March 20, 1995, unless notice is received by February 17, 1995, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA's analysis are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE-17J), Chicago, Illinois 60604; and Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102) room M1500, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Randy Robinson, Air Enforcement Branch, Regulation Development Section (AE-17J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 353-6713.

#### SUPPLEMENTARY INFORMATION:

##### I. Summary of State Submittal

On December 11, 1992, the Minnesota Pollution Control Agency (MPCA) submitted proposed revisions to its SIP for SO<sub>2</sub> for the St. Paul Park area of Air Quality Control Region 131. The submittal also contained technical information to support demonstration and maintenance of the National Ambient Air Quality Standards (NAAQS) for SO<sub>2</sub>. On September 2, 1994 (59 FR 45653) the USEPA proposed to disapprove the MPCA submittal based on several enforceability and attainment demonstration issues. However, that notice also stated that if the MPCA adequately addressed the concerns before the end of the 30-day comment period, and if no other substantive, adverse comments were received, USEPA would proceed with a direct final approval. On September 30, 1994, the MPCA submitted a revised proposed SIP, along with technical information, addressing the issues raised in the proposed disapproval. The notice of proposed rulemaking (59 FR 45653) contained a comprehensive discussion of the history of the submittal, the attainment demonstration, the requirements of section 172 of the CAA, 42 U.S.C. 7502, and the issues identified by USEPA concerning enforceability and attainment demonstration aspects of the submittal. This notice of direct final rulemaking will summarize the major items of the submittal as well as provide information as to how the September 30, 1994, MPCA submittal addressed the issues identified in the proposed rulemaking.

##### Background

The USEPA published the designation of AQCR 131 as a primary

nonattainment area for SO<sub>2</sub> on March 3, 1978 (43 FR 8692). The MPCA submitted a final SO<sub>2</sub> plan on August 4, 1980. The USEPA published its final rule approving and promulgating the Minnesota Part D SIP for SO<sub>2</sub> for AQCR 131 on April 8, 1981 (46 FR 20997). AQCR 131, however, has not been redesignated to attainment. The promulgation of the Stack Height Rule on July 8, 1985, required the MPCA to review existing emission limitations to determine if any sources were affected by the new Rule. The MPCA determined that Ashland Petroleum Company, located in the St. Paul Park area of AQCR 131, would require additional permit revisions due to modeled violations using the reduced creditable stack heights.

In response to the modeled violations, the MPCA submitted a proposed SIP revision for SO<sub>2</sub> for the St. Paul Park area on December 11, 1992. The submittal included an administrative order for the Ashland Petroleum Company-St. Paul Park Refinery, in addition to dispersion modeling and technical support intended to show that the limits are sufficient to attain and maintain the NAAQS for SO<sub>2</sub>. A subsequent revision, containing an amended administrative order for Ashland Petroleum Company and additional technical support, was submitted on September 30, 1994.

##### II. Submittal Review Summary

This section will provide a summary of USEPA's review of the attainment demonstration and administrative order for Ashland Petroleum Company. A more detailed description is contained in the notice of proposed rulemaking (59 FR 45653) and in the technical support document associated with this action.

##### Modeling Methodology

Section 172(c)(6) of the Clean Air Act requires that plan revisions include enforceable emission limitations and other control measures, means or techniques, necessary to provide for attainment of the applicable NAAQS. The State submittal demonstrated attainment through the use of air dispersion modeling. The primary guidance for such demonstrations is the "Guideline on Air Quality Models (Revised)" (1986), Supplement A (1987), and Supplement B (1993), which specifies the criteria for selection of dispersion models and for estimation of emissions and other model inputs. In accordance with that guidance, the dispersion modeling conducted for the administrative order in the submittal was performed using the Industrial