directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The entire cost of this fee increase would be approximately $450,000 per year and would be distributed among approximately 30 companies who would pay an increased fee that is proportional to the number of pounds of color that they certify. Because the great majority of these costs will be borne by a few firms that have a dominant share of the market, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 80

Color additives, Cosmetics, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Foods and Drugs, the interim rule published in the Federal Register of November 29, 1994 (59 FR 60898) is confirmed with the following changes to 21 CFR part 80:

PART 80—COLOR ADDITIVE CERTIFICATION

1. The authority citation for 21 CFR part 80 continues to read as follows:

Authority: Secs. 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371, 379e).

§ 80.10 [Amended]

2. Section 80.10 *Fees for certification services* is amended by removing paragraph (c) and by redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively.

Dated: January 25, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–1977 Filed 1–31–96; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–064–1–7179a; FRL–5305–7]

Approval and Promulgation of Implementation Plans: Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to Florida's State Implementation Plan (SIP) to allow the State of Florida to issue Federally enforceable state operating permits (FESOP). On December 21, 1994, the State of Florida through the Florida Department of Environmental Protection (FDEP), submitted a SIP revision fulfilling the requirements necessary for a state FESOP program to become Federally enforceable. In order to extend the Federal enforceability of Florida's FESOP program to hazardous air pollutants (HAP), EPA is also approving Florida's FESOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that Florida may issue Federally enforceable state operating permits for HAP.

DATES: This final rule is effective April 1, 1996 unless adverse or critical comments are received by March 4, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Gracy R. Danois, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Gracy R. Danois, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4150. Reference file FL–064–1–7179a.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On December 21, 1994, the State of Florida through the FDEP submitted a SIP revision designed to make certain permits issued under the State's existing minor source operating permit program Federally enforceable pursuant to EPA requirements as specified in a Federal Register notice, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules.'' (see 54 FR 22274, June 28, 1989). Additional materials were provided by FDEP to EPA in a supplemental submittal on April 24, 1995.

Florida will continue to issue permits which are not Federally enforceable under its existing minor source operating permit rules as it has done in the past. The SIP revision, which is the subject of this document, adds requirements to Florida's current minor source operating permit program, which allows the State to issue FESOP. This voluntary SIP revision allows EPA and citizens under the CAA to enforce terms and conditions of Florida's FESOP program. Operating permits that are issued under the State's FESOP program that is approved into the SIP and under section 112(l), will provide Federally enforceable limits to an air pollution source's potential to emit. Limiting a source's potential to emit through Federally enforceable operating permits can affect the applicability of Federal regulations, such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and federal air toxics requirements mandated under section 112 of the CAA, to a source.

In the aforementioned June 28, 1989, Federal Register document, EPA listed

five criteria necessary to make a State's minor source operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of Florida's FESOP program.

The first criterion for a state's operating permit program to be Federally enforceable is EPA's approval of the permit program into the SIP. On December 21, 1994, the State of Florida submitted through FDEP a SIP revision designed to meet the five criteria for Federal enforceability. The State supplemented their submittal with additional information on April 24, 1995. Today's action will approve these regulations into the Florida SIP, and therefore satisfy the first criterion for Federal enforceability.

The second criterion for a state's operating permit program to be Federally enforceable is that the regulations approved into the SIP must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. Florida's program meets this criterion in Rule 62–210.300(2)(b)1.d. of the Florida Administrative Code (F.A.C.), by stating that ''each permit shall be conditioned such that the owner or operator is legally obligated to adhere to the terms and limitations of such permit, and of any revision or renewal of such permit made in accordance with the requirements of this paragraph * * *'' Moreover, F.A.C. 62–210.300(2)(b)1., states that only permits issued, renewed or revised in accordance with the requirements of this rule shall be deemed Federally enforceable. Hence, the second criterion for Federal enforceability is satisfied.

The third criterion for a state's operating permit program to be Federally enforceable is that the state operating permit program must require all emissions limitations, controls, and other requirements imposed by permits to be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and the program may not issue permits that waive, or make less stringent, any limitations or requirements 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 CAA). The first paragraph of F.A.C. Rule 62–210.300, requires that ''all emissions limitations, controls, and other requirements imposed by such permits shall be at least as stringent as any applicable limitations and requirements contained in or enforceable under the SIP or that are otherwise Federally enforceable''. Additionally, this paragraph specifies that ''issuance of a permit does not relieve the owner or operator of any emission unit from complying with applicable emission limiting standards or other requirements of the air pollution rules of the Department or any other applicable requirements under Federal, state, or local law.'' Therefore, this section of Florida's permits rule satisfies the third criterion for Federal enforceability.

The fourth criterion for a state's operating permit program to be Federally enforceable is that limitations, controls, and requirements in the operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter. With respect to this criterion, enforceability is essentially provided on a permit-by-permit basis, particularly by writing practical and quantitative enforcement procedures into each permit. EPA will review the Federal enforceability of Florida's permits by using the policy memorandum entitled, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and title V of the Clean Air Act (Act),'' dated January 25, 1995, which describes the types of limitations that reduce potential to emit in a Federally enforceable manner. Florida's F.A.C. Section 62–210.300(2)(b)1.e. provides for fully enforceable permit requirements. Concerning permanence, F.A.C. Section 62–210.300(2)(b)(2), establishes that once a facility obtains a synthetic non-title V permit, the facility is subject to its requirements unless the source becomes a title V source or the facility can demonstrate that is ''naturally minor'' without any Federally enforceable limitations. Consequently, Florida's rules provide for the degree of permanence necessary for enforcement of the applicable provisions, and provide that the permit limitations will be fully enforceable. Hence, the fourth criterion for Federal enforceability is met.

The fifth criterion for a state's operating permit program to be Federally enforceable is providing EPA and the public with timely notice of the proposal and issuance of such permits, and providing EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. Florida satisfies this criteria in F.A.C. Sections 62–210.300(2)(b)1.b., 62–210.350(1)(a)2. and 62–210.350(4), which require the State to provide a 30 day public comment period of proposed permitting actions, and to provide a copy of each proposed (or draft) and final permit to the Administrator. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review under the Florida FESOP program will not be Federally enforceable.

In addition to requesting approval into the SIP, Florida has also requested approval of its FESOP program under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAP through the issuance of Federally enforceable state operating permits. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants.

EPA believes that the five criteria for Federal enforceability are also appropriate for evaluating and approving FESOP programs under section 112(l). The June 28, 1989, Federal Register document did not specifically address HAPs because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a FESOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) gives EPA authority 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 CAA. The January 25, 1995, memorandum cited above, provides further discussion of these criteria and of the extent to which limits on criteria pollutants such as volatile organic compounds and particulate matter may be considered to limit sources' potential to emit HAP.

EPA plans to codify the approval criteria for programs limiting the potential to emit for HAP, such as FESOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the CAA. (See 58 FR 62262, November 26, 1993). EPA anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, Federal Register document. The EPA also anticipates that since FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E

revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit the potential to emit of HAP directly under section 112(l) prior to the Subpart E revisions. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is to say, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is approving Florida's FESOP program so that Florida may begin to issue Federally enforceable operating permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Florida's FESOP 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, Florida's program does not allow for the waiver of any section 112 requirements. Sources that become minor through a permit issued pursuant to this program would still be required to meet the section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes Florida has demonstrated that it will provide adequate resources to support the FESOP program. EPA expects that resources will continue to be adequate to administer that portion of the State's minor source operating permit program under which Federally enforceable operating permits will be issued since Florida has administered a minor source operating permit program for several years. EPA will monitor Florida's implementation of its FESOP program to ensure that adequate resources are in fact available.

EPA also believes that Florida's FESOP program provides for an expeditious schedule to assure 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 Florida's FESOP 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 Florida'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 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 the program requirements.

With Florida's addition of these provisions and EPA's approval of this revision to the SIP, Florida's FESOP program satisfies the criteria described in the June 28, 1989, Federal Register document.

II. Final Action

In this action, EPA is approving Florida's FESOP program. EPA 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 publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 1, 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 April 1, 1996.

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

Under section 307(b)(1) of the CAA, 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 April 1, 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 Executive Order 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 SIP. Each request for revision to the SIP 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 approvals under section 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) and 7410(R).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA 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 State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State has elected to adopt the program provided for under Section 112(l) of the Clean Air Act. These rules may bind the State government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements, such sources are already subject to these regulations under State law. Accordingly, no additional costs to the State government, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to the State government in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: September 20, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *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 K—Florida

2. Section 52.520 is amended by adding paragraph (c)(90) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(90) Revisions to Chapter 62–210, Stationary Sources—General Requirements, submitted by the Florida Department of Environmental Protection on December 21, 1994 and April 24, 1995.

(i) Incorporation by reference.

(A) Revised Sections 62–210.300, ''Permits Required'', except 62–210.300(2)(b)1., and 62–210.350, ''Public Notice and Comment'', effective November 23, 1994. Revised Section 62–210.300(2)(b)1., effective April 18, 1995.

[FR Doc. 96–1937 Filed 1–31–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL112–1–6759a; FRL–5331–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On October 24, 1994, the State of Illinois submitted a site-specific State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) for Alumax Incorporated's Morris, Illinois facility, as part of the State's requirement under the Clean Air Act (Act) to adopt Reasonably Available Control Technology (RACT) rules controlling Volatile Organic Material (VOM) for sources in the Chicago ozone nonattainment area which have the potential to emit 25 tons of VOM per year and are not covered under a USEPA Control Techniques Guideline (CTG) document. VOM, as defined by the State of Illinois, is identical to ''volatile organic compounds'' (VOC), as defined by USEPA. Emissions of VOC react with other pollutants, such as oxides of nitrogen, on hot summer days to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. Chicago area RACT rules are intended to establish for each particular major stationary source in the Chicago ozone nonattainment area the lowest VOC emission limitation it is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. RACT controls are a major component of the Chicago ozone nonattainment area's overall strategy to achieve and maintain attainment with the ozone standard. A final approval action is being taken because the submittal meets all pertinent Federal requirements.

DATES: The ''direct final'' is effective on April 1, 1996, unless USEPA receives adverse or critical comments by March 4, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision request and USEPA's analysis (Technical Support Document) are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(2) of the Act requires States with moderate and above ozone nonattainment areas to adopt VOC RACT rules covering ''major'' sources not already covered by a CTG for all areas designated nonattainment for ozone and classified as moderate or above. Under Section 182(d), sources located in areas classified as ''severe'' are considered ''major'' sources if they have the potential to emit 25 tons per year or more of VOC.

On October 21, 1993, the State of Illinois submitted ''generic'' RACT rules covering non-CTG major sources in the Chicago severe ozone nonattainment