205, EPA 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated 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 to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 20, 1996.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the 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.

2. Section 52.320 is amended by adding paragraph (73) to read as follows:

SUBPART G—COLORADO

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(77) On September 29, 1995, Roy Romer, the Governor of Colorado, submitted a SIP revision to the State Implementation Plan for the Control of Air Pollution. This revision provides a replacement Regulation No. 11, Inspection/Maintenance Program which limits dealer self-testing. This material is being incorporated by reference for the enforcement of Colorado's I/M program.

(i) Incorporation by reference.

(A) Department of Health, Air Quality Control Commission, Regulation No. 11 (Motor Vehicle Emissions Inspection Program) as adopted by the Colorado Air Quality Control Commission (AQCC) on September 22, 1994, effective November 30, 1994.

[FR Doc. 97–1075 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FL–68–2–9640a; FRL–5662–1]

Approval and Promulgation of Implementation Plans State: Approval of Revisions to the State of Florida State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) to allow the State air pollution control agency to utilize exclusionary rules via general permits for the purpose of limiting potential to emit (PTE) criteria pollutants for certain source categories to less than the title V permitting major source thresholds. EPA is also approving under section 112(l) of the Clean Air Act (CAA) the same source-categories of the submitted regulations for limiting PTE of hazardous air pollutants (HAP) to less than title V permitting major source thresholds. These exclusionary rules allow facilities to compute potential emissions based on actual emissions or raw material usage for the following source categories: Asphalt concrete plants, bulk gasoline plants, emergency generators, surface coating operations, heating units and general purpose internal combustion engines, polyester resin plastic products, cast polymer operations; and mercury reclamation and recovery operations. On April 15, 1996, the State of Florida through the Department of Environmental Protection (DEP) submitted a SIP revision fulfilling the requirements necessary to utilize exclusionary rules to limit PTE of air pollutants in a federally enforceable manner. On August 6, 1996, the State of Florida submitted updates to the earlier submittal which also fulfill the requirements necessary to utilize exclusionary rules to limit PTE in a federally enforceable manner.

DATES: This final rule is effective March 18, 1997 unless adverse or critical comments are received by February 18, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Scott Miller at the Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Copies of 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. Reference file FL–68–2–9640. The Region 4 office may have additional background documents not available at the other locations.

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 Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Scott Miller, 404/562–9120.

Florida Department of Environmental Protection, Division of Air Resources Management, 2600 Blair Stone Road, MS 5500, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Scott Miller at 404/562–9120.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On April 15, 1996, the State of Florida through the DEP submitted a SIP revision designed to allow the agency to utilize exclusionary rules for the purpose of limiting PTE for asphalt concrete plants, bulk gasoline plants, emergency generators, surface coating operations, heating units and general purpose internal combustion engines, polyester resin plastic products, cast polymer operations, and mercury reclamation and recovery operations. On August 6, 1996, the State of Florida submitted updates to the earlier submittal which also fulfill the requirements necessary to utilize exclusionary rules to limit PTE in a federally enforceable manner. Exclusionary rules are designed to create federally enforceable limits on a facility's PTE in a manner that does not require a facility-specific evaluation of emissions and limiting conditions. As such, exclusionary rules are appropriate for the purpose of limiting PTE when a facility has one type of emission source. EPA is approving all source-category rules found at Florida Administrative Code (F.A.C.) at 62–210.300(3)(c) and 62–210.300(4), submitted for purposes of limiting PTE for criteria pollutants into the SIP. The DEP is implementing these exclusionary rules found at 62–210.300(3)(c) through general permitting regulations found at 62–210.300(4). EPA is also approving under section 112(l) of the CAA, the regulations found in the F.A.C. 62–210.300(3)(c) and 62–210.300(4) for purposes of limiting PTE of HAP. For a description of this and other ways to limit PTE for a facility see the EPA guidance document 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, from John Seitz to the EPA Regional Air Division Directors.

These rules which set out specific conditions for a facility to limit its PTE were designed to meet criteria listed in the EPA guidance memorandum entitled ''Guidance for State Rules for Optional Federally Enforceable Emissions Limits Based on Volatile Organic Compound Use'' dated October 15, 1993, from D. Kent Barry to the EPA Regional Air Division Directors, an EPA guidance document entitled ''Approaches to Creating Federally-Enforceable Emissions Limits'' dated November 3, 1993, and the January 25, 1995, guidance memorandum referenced above. These guidance documents set out specific guidelines for exclusionary rule development regarding applicability, compliance determination and certification, monitoring, reporting, record keeping, public involvement, practical enforceability, and the requirement that a facility cannot rely on emission limits or caps contained in a exclusionary rule to justify violation of any rate-based emission limits or other applicable requirements.

These regulations apply to facilities which agree to limit their annual emissions to less than major source thresholds for criteria and/or HAP emissions. A rule which sets out the operating parameters must also provide that a facility owner or operator specifically apply for coverage under the exclusionary rule. F.A.C. Regulations 62–210.300(3)(c) and 62–210.300(4) provide that the exclusionary rules are for certain source categories to define and limit their potential emissions to less than major source levels for title V purposes. The source categories covered by the exclusionary rules are asphalt concrete plants, bulk gasoline plants, emergency generators, surface coating operations, heating units and general purpose internal combustion engines, polyester resin plastic products, cast polymer operations, and mercury reclamation and recovery operations. F.A.C. Regulation 62–210.300(3)(c) provides that even though a facility is exempted from obtaining a title V permit by complying with these exclusionary rules, it is still required to obtain a general permit. As such, these regulations meet the guidelines specified in the October 15, 1993, and the January 25, 1995, guidance documents that require an exclusionary rule to clearly identify the category of sources that qualify for the rule's coverage.

The October 15, 1993, and the January 25, 1995, guidance documents suggest that facilities be required to show compliance with the exclusionary rule on a yearly basis by requiring monthly record keeping of the relevant variable causing emissions and showing compliance using the monthly record of the relevant variable affecting emissions. The January 25, 1995, guidance document stipulates that where monitoring cannot be used to determine emissions directly, limits on appropriate operating parameters must be established for the units or source, and monitoring must verify compliance with those limits. In the case of the Florida exclusionary rule regulations, a facility is required to keep records of the use of or processing of a product or substance that produces the emissions. For instance, F.A.C. Regulation 62–210.300(3)(c)1.g requires concrete asphalt facilities to keep monthly and twelve-month rolling total records of asphaltic concrete produced, gallons of fuel oil consumed and the hours of operation. The asphalt concrete facility must then show compliance with the 500,000 ton per any consecutive twelve-month period, fuel-oil consumption records that show that no more than 1.2 million gallons are combusted in any consecutive twelve-month period, and that fuel-oil sulfur content is less than or equal to 1 percent sulfur as determined by ASTM methods ASTM D4057–88, D129–91, D2622–94, or D4294–90. Finally, a concrete asphalt facility must keep records of its operating hours to show that operating hours do not exceed 4000 hours in any consecutive twelve-month period. EPA believes that the exclusionary rules submitted by the DEP meet the guidelines outlined in the October 15, 1993, and January 25, 1995, guidance documents for purposes of detailing specific compliance monitoring to show compliance with the relevant exclusionary rule limit.

The October 15, 1993, guidance document recommends that all submittals that result from exclusionary rules be certified for truth, accuracy, and completeness. Each facility which chooses to be covered by an exclusionary rule submitted by the DEP must make submissions which are certified by the appropriate official as defined under the Air General Permit Notification Form. For instance, F.A.C. Regulation 62–210.300(3)(c)1.j requires concrete asphalt facilities to submit a notification to DEP that certifies that the facility is operating in compliance with the exclusionary rule to which it is subject. In addition, the facility must also certify that it will continue to operate in compliance with the exclusionary rule to which it is subject. EPA believes that the DEP exclusionary rules meet the requirements of the October 15, 1993, guidance document for purposes of certifying compliance with the exclusionary rule to which a facility is subject.

The October 15, 1993, guidance document recommends that reporting requirements should vary based on how close the facility emissions are to the relevant major source threshold. For facilities with emissions that are close to the major source threshold, the guidance recommends that a state or local air pollution control agency require more frequent reporting of the variable affecting emissions (e.g., gasoline throughput). In lieu of requiring facilities to report emissions to DEP, DEP requires the facility to

maintain records for a period of five years from their origination. These records are required to be readily available for submission or inspection on-site. In addition, the DEP has committed to inspect ten percent of facilities subject to an exclusionary rule every year. While the rules submitted by the DEP do not match recommended guidelines found in the October 15, 1993, guidance document for reporting requirements, the EPA believes that the DEP inspections of subject facilities, along with the above mentioned record keeping requirements, are sufficient to ensure compliance by subject facilities.

The October 15, 1993, and the January 25, 1995, guidance documents specify that record keeping is required by a facility to show that the facility is eligible for the exclusionary rule and that the facility is in compliance with the relevant exclusionary rule. The October 15, 1993, guidance document requires that record keeping shall be maintained on site and available to the permitting authority upon demand. The October 15, 1993, guidance document also requires that a facility be required to retain records for a period sufficient to support enforcement efforts. The DEP regulations require that copies of all records required to be kept for exclusionary rule purposes be kept on site and be available to each agency on demand. The exclusionary rules submitted by DEP require that records be kept for a period of five years from the date the records are originated. EPA believes that a five year time period is an adequate time period for a facility subject to an exclusionary rule to maintain records in order to support enforcement efforts.

The November 3, 1993, and the January 25, 1995, guidance documents set out requirements for public involvement in the development and application of exclusionary rules. The November 3, 1993, guidance document states that if exclusionary rules are sufficiently reliable and replicable, EPA and the public need not be involved with their application to individual sources, as long as the protocols themselves have been subject to notice and opportunity to comment and have been approved by EPA into the SIP. The January 25, 1995, guidance document provides that source-category standards approved into the SIP or under section 112(l) of the CAA, if enforceable as a practical matter, can be used as federally enforceable limits on PTE. Once a specific source qualifies under the applicability requirements of the source-category rule, additional public participation is not required to make the limits federally enforceable as a matter of legal sufficiency since the rule itself underwent public participation and EPA review. The DEP general permit exclusionary rules underwent public participation at the State level when these rules were made State-effective by the DEP. EPA has had an opportunity to review these regulations and is publishing this document to take comment on these regulations at the national level. Later in this Federal Register document, practical enforceability of DEP's exclusionary rules will be addressed. EPA believes that, with this Federal Register document and other public process received at the State and local level, the DEP exclusionary rules satisfy requirements for public participation outlined in the November 3, 1993, and the January 25, 1995, guidance documents.

The January 25, 1995, guidance document sets out requirements for exclusionary rule conditions to be practically enforceable. These requirements stem from past precedence in what the EPA has required for a permit to be considered enforceable as a practical matter. See 54 FR 27274 (June 28, 1989) and a June 13, 1989, EPA policy memorandum entitled ''Limiting Potential to Emit in New Source Permitting.'' The criteria include clear statements as to the applicability, specificity as to the standard that must be met, explicit statements of the compliance time frames (e.g., hourly, daily, monthly, or 12-month averages, etc.), that the time frame and method of compliance employed must be sufficient to protect the standard involved, record keeping requirements must be specified, and equivalency provisions must meet specific requirements. In general, practical enforceability means that the provision must specify; (1) A technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping, and reporting. All of these elements have been discussed prior to this paragraph in this Federal Register with the exception of (2) above. The DEP regulations require facilities subject to the exclusionary rule to keep records on a monthly basis and to determine compliance with a yearly limit on a calendar monthly rolling average basis. This method for determining compliance with the exclusionary rule limitation was addressed specifically as one practically enforceable way to show compliance with a permit limit in the June 13, 1989, guidance document entitled ''Limiting Potential to Emit in New Source Permitting.'' As such, EPA believes the DEP general permit exclusionary rule regulations meet the requirements necessary for exclusionary rules to be enforceable as a practical matter.

Finally, the October 15, 1993, guidance document stipulates that a facility cannot rely on emission limits or caps contained in a exclusionary rule to justify violation of any rate-based emission limits or other applicable requirements. This requirement is reflected by the fact that exclusionary rules are carried out through general permits. These general permits contain other requirements to which a facility is subject. Since the general permit will include all requirements to which a facility is subject, it follows that the exclusionary rules contained in the general permit cannot be used to override other requirements found in the permit. Therefore, EPA believes that the DEP exclusionary rules meet the requirements listed in the October 15, 1993, guidance document regarding the use of an exclusionary rule cap to justify violation of any rate-based emission limit or other applicable requirements.

Eligibility for federally enforceable exclusionary rule certifications extends not only to certifications made after the effective date of this rule, but also to certifications issued under the State rule prior to the effective date of this rulemaking. If the State agency followed its own regulation, it received exclusionary rule certifications that established a limiting condition on a facility's PTE. EPA will consider all such exclusionary rule certifications which were submitted in a manner consistent with the State agency regulations as federally enforceable upon the effective date of this action.

II. Final Action

In this action, the EPA is approving the State of Florida exclusionary rules and general permit regulations found at FAC Regulation 62–210.300(3)(c) and 62–210.300(4) into the Florida SIP. The EPA is approving Florida regulations FAC Regulation 62–210.300(3)(c) and 62–210.300(4) for purposes of limiting PTE of HAP under section 112(l) of the CAA. The EPA is publishing this document without prior proposal because the EPA 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 March 18, 1997 unless, by February 18, 1997,

adverse or critical comments are received. If the 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 be addressed in a subsequent final rule based on this action serving as a proposed rule. The 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 March 18, 1997.

EPA 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.

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

III. Administrative Requirements

A. Executive Order 12866

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 has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, 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).

C. Unfunded Mandates Reform Act of 1995

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

EPA has determined that the final action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the 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).)

List of Subjects in 40 CFR Part 52

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

Dated: August 29, 1996.

R. F. McGhee,

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, paragraph (c) is amended by adding paragraph (97) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(97) General permit rules and exclusionary rules for the State of Florida Department of Environmental Protection submitted by the Florida Department of Environmental Protection as part of the Florida SIP.

(i) Incorporation by reference.

(A) Florida Administrative Code Regulation 62–210.300(3)(c) and 62–210.300(4) of the Florida SIP as adopted by the Secretary of the Florida Department of Environmental Protection on July 26, 1996 and which became effective on August 15, 1996.

(ii) Other material. None.

[FR Doc. 96–1077 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P