implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the Act, preparation of flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976).

F. Unfunded Mandates

Under sections 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 approval action proposed 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 proposes to approve 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2001.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 01–16567 Filed 6–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FL–T5–2001–01a; FRL–7006–4]

Clean Air Act Proposed Full Approval of Operating Permit Program; State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: EPA proposes to fully approve the operating permit program of the Florida Department of Environmental Protection (FDEP). Florida's operating permit program was submitted in response to the directive in title V of the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to Florida's Title V operating permit program on September 25, 1995. The State revised its program to satisfy the conditions of the interim approval and this action proposes approval of those revisions. Also, other program changes made by the State since the interim approval are being proposed for approval as part of this action.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by August 31, 2001.

ADDRESSES: Written comments on this action should be addressed to Gracy R. Danois, Air Permits Section, Air & Radiation Technology Branch, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909. Copies of Florida's submittals and other supporting documentation relevant to this proposed action are available for inspection during normal business hours at EPA Region 4, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909.

FOR FURTHER INFORMATION CONTACT: Gracy R. Danois, Air Permits Section, EPA Region 4, at (404) 562–9119 or danois.gracy@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?

What is being addressed in this document?

What are the program changes that EPA is approving?

What is involved in this final action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the title V operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable

requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year (tpy) or more of volatile organic compounds (VOCs), carbon monoxide (CO), lead, sulfur dioxide (SO_2), nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tpy of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tpy or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, CO, or PM_{10}, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential of emitting 50 tpy or more of VOCs or NO_X.

What Is Being Addressed in This Document?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the State revising its program to correct the deficiencies. Because Florida 's operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on September 25, 1995 (60 FR 49343). The interim approval notice stipulated four conditions that had to be met in order for the State's program to receive full approval. Florida submitted seven revisions to its interimly approved operating permit program; these revisions were dated April 29, 1996, February 11, 1998, June 11, 1998, April 9, 1999 (two submittals), July 1, 1999, and October 1, 1999. This **Federal Register** notice describes changes that have been made to Florida's operating permit program since interim approval was granted.

What Are the Program Changes That EPA Proposes To Approve?

As stipulated in EPA's September 25, 1995 rulemaking, full approval of Florida's Title V operating permit program was made contingent upon the following rule changes:

I. Insignificant Activities Provisions

A. Provide EPA with an acceptable justification for establishing a source's aggregate emissions threshold of 50 tpy for triggering the State's CO reporting requirements in the permit application. Otherwise, the State must establish CO emissions thresholds that are consistent with its emissions thresholds for PM_{10}, SO_2, NO_X, and VOCs. In response to this deficiency, the State revised Rule 62–213.420(3)(c)3.a., Florida Administrative Code (F.A.C.) to include a reduced reporting threshold of 5 tpy for CO. The state-effective rule revision was submitted to EPA on April 29, 1996.

B. Revise Rules 62–4.040(1)(b), 62–210.300(3), and 62–213.400, F.A.C. to provide that:

(1) Permit applications do not omit information needed to determine or impose applicable requirements (as defined in Rule 62–213.200(6), F.A.C.);

(2) Insignificant activities or emission units will be included in the determination of whether a source is major; and

(3) Emissions thresholds for insignificant activities or emission units will not exceed 5 tpy for regulated air pollutants and 1000 pounds per year for individual HAPs, or different thresholds that the State demonstrates are insignificant.

In response to these deficiencies, the State revised Rule 62–210.300(3), F.A.C. to establish that the list of activities ''exempted from permitting requirements'' contained in Rule 62–210.300(3), F.A.C. and the general exemption contained in Rule 62–4.040, F.A.C. can only be used for title V purposes if the activities proposed for consideration as ''insignificant'' also comply with the criteria contained in Rule 62–213.430(6)(b), F.A.C. Rule 62–213.430(6)(b), F.A.C., in turn, establishes the emission thresholds for individual activities or units, which are no more than 500 pounds per year of lead and lead compounds expressed as lead, 1,000 pounds per year of any individual HAPs, 2,500 pounds per year of total HAPs, and 5 tpy of regulated air pollutants. Rule 62–210.300(3), F.A.C. also establishes that ''the emissions from the exempt units or activities shall be considered in determining whether a facility containing such emissions units or activities would be subject to any applicable requirement'', which adequately addresses the deficiency noted in B.(2) above. Further, Rule 62–213.400, F.A.C. was revised to delete all references to Rules 62–210.300(3) and 62–4.040, F.A.C. The state-effective rule revision was submitted to EPA on April 29, 1996.

With regard to the deficiency noted in item B.(1) above, Rule 62–213.420(3)(n), F.A.C. was revised to require the applicant to submit any information needed to demonstrate that the units or activities are considered insignificant under the provisions of Rule 62–213.430(6), F.A.C. This rule revision was also submitted to EPA on April 29, 1996. Of note is that the citation for the definition of applicable requirement given in item B.(1) is no longer correct; the correct citation is now Rule 62–210.200(31), F.A.C.

In addition, in the discussion regarding insignificant activities contained in the **Federal Register** notice granting final interim approval to Tennessee's operating permit program (61 FR 39335, July 29, 1996), EPA responded to the June 17, 1996, Ninth Circuit Court of Appeals decision in *Western States Petroleum Association (WSPA)* v. *EPA*, No. 95–700034 (June 17, 1996) [87 F.3d 280 (9th Cir. 1996)] by stating that the language contained in Florida's Rule 62–210.300(3) ''can be read as creating an exemption from permit content.'' In a February 14, 1997, letter to Florida (R. Douglas Neeley, Chief, Air & Radiation Technology Branch, EPA Region 4, to Howard L. Rhodes, Director, Division of Air Resources Management, FDEP), EPA identified additional problematic language in Rules 62–4.040(1) and 62–213.430(6)(a), F.A.C. In response to EPA's concerns, Florida deleted the language ''exempted from permitting'' and replaced it with ''considered insignificant'' in Rules 62–213.300 and 62–213.430, F.A.C. And though Rules 62–4.040(1) and 62–210.300(3), F.A.C. still provide for exemptions from permitting, Rules 62–213.300(3)(a) and 62.213.430(6)(b), F.A.C. take precedence and dictate how the other rules are to be applied for title V purposes. The State voluntarily took this action in order to avoid any further misinterpretations of their intent to consider certain emission units or activities ''insignificant'' for title V purposes. The state-effective rule revisions rules were submitted to EPA on February 11, 1998.

C. Remove or revise the following specific exemptions:

(1) Rule 62–210.300(3)(a), F.A.C. exempting ''(s)team and hot water

generating units located within a single facility and having a total heat input, individually or collectively, equaling 50 million BTU/hr or less, and fired exclusively by natural gas except for periods of natural gas curtailment during which fuel oil containing no more than one percent sulfur is fired * * *.''

(2) Rule 62–210.300(3)(r), F.A.C. exempting ''[p]erchloroethylene dry cleaning facilities with a solvent consumption of less than 1,475 gallons per year.''

(3) Rule 62–210.300(3)(u), F.A.C. exempting ''[e]mergency electrical generators, heating units, and general purpose diesel engines operating no more than 400 hours per year * * *.''

(4) Rule 62–210.300(3)(x), F.A.C. exempting ''[p]hosphogypsum disposal areas and cooling ponds.''

In response to these deficiencies, Florida made the following revisions to Rule 62–210.300(3), F.A.C. and submitted the state-effective rule revisions to EPA on April 29, 1996:

(a) Rule 62–210.300(3)(a), F.A.C. was changed to limit the units to operate no more than 3000 hours per year while firing natural gas and no more than 400 hours per year while firing fuel oil containing no more than 1.0% sulfur. In a subsequent rulemaking, this exemption was redefined to address steam and hot water generating units located within a single facility and having a total heat input, individually or collectively, equaling 100 million BTU/hr or less. All references to units with a total heat input of 50 million BTU/hr or less were deleted from the rule language. The new exemption restricts the annual use of fuel oil containing no more than 1.0% sulfur to 145,000 gallons, fuel oil containing no more than 0.5% sulfur to 290,000 gallons, fuel oil containing no more than 0.05% sulfur to one million gallons, natural gas to no more than 150 million standard cubic feet, or propane to no more than one million gallons;

(b) Rule 62–210.300(3)(a)20, F.A.C. (previously 62–210.300(3)(r), F.A.C.) was changed to limit the fuel consumption of emergency generators to 32,000 gallons per year diesel fuel, 4,000 gallons per year of gasoline, 4.4 million standard cubic feet per year of natural gas or propane, or an equivalent prorated amount if multiple fuels are used; and,

(c) Rule 62–210.300(a)25, F.A.C. (previously Rule 62–210.300(3)(x), F.A.C.) was modified to provide an exemption only for phosphogypsum cooling ponds and inactive phosphogypsum stacks that have demonstrated compliance with the requirements of 40 CFR 61, Subpart R.

To address item C.(2) above, Florida deleted the temporary exemption for small dry cleaners contained in Rule 62–210.300.(3)(b)2., F.A.C. (previously contained in Rule 62–210.300(3)(r), F.A.C.), because these facilities were going to be permitted under a title V general permit. In addition to redefining the exemptions described above to ensure that potential major sources are not inadvertently exempted from state permitting requirements, the State included language in Rule 62–210.300(3)(a), F.A.C., to clarify that in order for the exemptions to be considered insignificant for title V purposes, they must also meet the criteria contained in Rules 62–213.300(3)(a) and 62.213.430(6)(b), F.A.C. The State submitted the state-effective rule revisions to EPA on February 11, 1998.

II. Permit Reopening Provisions

The State was required to make the regulatory provisions for permit reopenings for cause consistent with 40 CFR 70.7(f)(1) (i), (iii), and (iv). In response, Florida revised Rules 62–213.430(4) and 62–213.430(5), F.A.C. to reference the provisions contained in 40 CFR 70.7(f). The State submitted the revised rules to EPA on April 29, 1996.

III. Other Program Revisions

In addition to the changes described above, the State of Florida made the following substantive changes to its program after it received interim approval:

A. Rule Repeals/Conforming Amendments

In response to an Executive Order from the Florida Governor, all of the State's agencies were required to significantly reduce their number of administrative rules. To address that order, the Florida Department of Environmental Protection repealed rules in Chapters 62–213 and 62–214, F.A.C., and made conforming amendments within Chapters 62–210, 62–213, and 62–214, F.A.C. In most cases, the language in the various rules was moved without changes. The title V-related rule changes primarily involved corrections to internal rule citations that were made necessary by the rule reorganization. The following substantive changes were submitted for EPA's approval on April 29, 1996:

(1) All of the definitions in Rules 62–210, 62–213, 62–214, 62–296, and 62–297, F.A.C. were consolidated in Rule 62–210.200, F.A.C.;

(2) The definition of ''applicable requirement'' in Rule 62–210.200(29), F.A.C. was modified to include permit conditions contained in a federally enforceable state operating permit (FESOP);

(3) The definition of ''major source of air pollution or title V source'' in Rule 62–210.200(172), F.A.C. was revised to exclude the Standard Industrial Classification (SIC) code when determining whether a facility is a major source of HAPs; and,

(4) The definition of ''modification'' in Rule 62–210.200(182), F.A.C. was revised to include the terms from the definition of ''modification'' in former Rule 62–213.200, F.A.C.

B. Incorporation of White Paper Guidance

Florida revised Rules 62–210.900(1), 62–210.900(2), and 62–213.420(3), F.A.C. to incorporate the flexibility described in the EPA's July 10, 1995, guidance memorandum entitled ''White Paper for Streamlined Development of Part 70 Permit Applications.'' The following revisions were submitted to EPA for approval on April 29, 1996:

(1) The title V permit application now requires identification only, at the facility level, of all pollutants with potential to emit (PTE) equal to or greater than a major source thresholds, all synthetically minor pollutants, and all pollutants subject to a numerical emissions limitation or work practice standard at one or more emissions unit at the facility;

(2) As a result of the change described in item (1), the requirement to perform facility-wide reporting was eliminated from the permit application requirements, except for those sources subject to a facility-wide emissions cap;

(3) The permit application requirements were modified to clarify that for regulated emissions units (i.e., those which emit at least one emission-limited pollutant or are subject to a unit-specific work practice standard for the control of a pollutant or family of pollutants or to a unit-specific visible emissions standard), all parts of the application must be completed. However, only quantitative emissions information needs to be provided for the emissions-limited pollutants;

(4) For unregulated emissions units (i.e., those with no emission-limited pollutants and no applicable work practice standards), the permit application requirements were modified to require descriptions, not quantification, of the pollutants emitted. The required information also includes the pertinent SIC code, the maximum emission rate, and descriptions of the

emission units and any air pollution control equipment; and,

(5) For all emission units, the permit application requirements were modified to require identification of all pollutants emitted at a source as follows:

(a) Each emission-limited pollutant (for regulated emissions units only); and,

(b) Each pollutant emitted in a significant amount. Specifically, CO, NO_X, SO_2, PM_{10}, and VOC must be identified if the emissions unit has a PTE equal to or greater than 5 tpy. Lead must be identified if the emissions unit has a PTE equal to or greater than 500 pounds per year. Each HAP must be identified if the emissions unit has a PTE equal to or greater than 1000 pounds per year and the facility is major for such HAP. Total HAPs must be identified if the emissions unit has a PTE equal to or greater than 2,500 pounds per year and the facility is major for total HAPs.

C. Title V General Permits

Florida's definition of a title V source includes any source subject to standards or regulations under section 112 of the CAA, except that a source is not subject to the State's operating permit program solely because it is regulated under section 112(r) of the CAA or solely because it is subject to a reporting requirement under section 112. The effect of this provision is to bring all sources subject to the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) program into the State's Title V program even though EPA has allowed ''area sources'' to be deferred from permitting. An ''area source'' is defined as any stationary source of HAPs that does not emit more than 10 tpy of any single HAP or 25 tpy of any combination of HAPs.

To reduce the burden of permitting area sources, Florida developed five general permits covering the following NESHAP requirements: asbestos manufacturing and fabrication facilities (40 CFR 61, Subpart M), perchloroethylene dry cleaning facilities (40 CFR 63, Subpart M), chromium electroplating and anodizing facilities (40 CFR 63, Subpart N), ethylene oxide sterilization facilities (40 CFR 63, Subpart O), and halogenated solvent degreasing facilities (40 CFR 63, Subpart T). Florida's general permits are permits-by-rule and are contained in Rule 62–213.300, F.A.C. Approximately 1,280 facilities in Florida are operating under these general permits, and most of them are perchloroethylene dry cleaning facilities.

The State submitted a request for approval of its general permit provisions to EPA on February 11, 1998. A revised request for approval of Rule 62–213.300, F.A.C. was submitted on April 9, 1999. In the revised request, the State asked for EPA's approval of an adjustment to the requirement for perchloroethylene dry cleaning facilities to submit semiannual startup, shutdown, and malfunction reports. The State requested that, in lieu of submitting semiannual reports, these facilities be allowed to retain the records onsite and submit reports of such deviations during facility inspections and with the annual compliance certifications required by 40 CFR 70.7(c)(5). The State's revised request was also submitted pursuant to section 112(l) of the CAA and EPA granted approval of the section 112(l) request on December 28, 1999 (64 FR 72568). However, as stated in the notice, this change does not exempt or delay any title V recordkeeping and compliance reporting requirements required of all title V sources in Florida.

Florida's implementation of its general permits program has brought about 85% of the covered area sources into compliance; sources that would otherwise be deferred from permitting requirements. Success of the State's program has been attributed to periodic inspection of the sources to ensure that the requirements of the general permits are being properly implemented. In addition, Florida has documented that perchloroethylene use has decreased throughout the state, thus contributing to a significant reduction in emissions from perchloroethylene dry cleaning facilities.

D. Fee Reassessment

On June 11, 1998, Florida sent a letter to EPA redefining the costs eligible for funding with title V fee revenues. Title V-related ambient air monitoring and State Implementation Plan development activities were deleted from Florida's list of eligible costs because the activities were being funded with other monies. As a result of this action, Florida expects to avoid a fee increase until the year 2003.

Additionally, Florida submitted an update regarding its title V fee program on October 1, 1999. The information provided in this update showed that no significant changes have been made to the State's fee program and it also demonstrated that Florida's Title V program is adequately funded by the fees collected. Because Florida has demonstrated that its operating permit program is adequately funded, EPA finds that the program satisfies the fee requirements of 40 CFR 70.9.

E. Minor Source Air Construction Permits (New Source Review) Partially Merged Program

On January 22, 1999, the State of Florida adopted amendments to Rule 62–210.300(1)(b)1., F.A.C. allowing conditions in minor source air construction permits to be changed when a title V permit or a FESOP containing these conditions is issued. These actions are, however, limited to changes that do not constitute modifications under Title I of the CAA (i.e., physical changes in, changes in the method of operation of, or additions to facilities that would result in increased emissions). The practical effect of these rule changes is to streamline the permitting process by eliminating the need for permittees to request that old minor source construction permits be reissued to make the changes approvable and federally enforceable before incorporating them into a FESOP or title V permit. The state-effective rule revision was submitted to EPA on April 9, 1999.

F. Compliance Assurance Monitoring (CAM) Rule Adoption

On April 7, 1998, the State of Florida adopted the CAM rule (40 CFR part 64) by reference into Rule 62–204.800(11), F.A.C. and made conforming amendments to Rule 62–213.440, F.A.C. These rule revisions were submitted to EPA on April 9, 1999.

G. Periodic Monitoring Rule

On July 7, 1998, EPA sent a letter to the State of Florida (from Winston A. Smith, Director, Air, Pesticides, and Toxics Management Division, EPA Region 4, to Howard L. Rhodes, Director, Division of Air Resources Management, FDEP) declaring that the State was inadequately administering its title V operating permit program by failing to include adequate periodic monitoring requirements in its title V permits (pursuant to 40 CFR 70.6). The State was also notified that EPA would issue a formal notification of deficiency, in accordance with the procedures outlined in 40 CFR 70.10, if action was not taken to rectify the deficiency. The basis for EPA's finding of deficiency was the State's assertion that it lacked regulatory authority to require periodic monitoring beyond that already included in the underlying applicable requirement. EPA had granted interim approval to Florida's Title V program with the understanding that since Florida's rules were essentially identical to the part 70 rule, the State would implement its program consistent with EPA's interpretation of 40 CFR 70.6 by

requiring insufficient monitoring already contained in applicable requirements to be supplemented with periodic monitoring requirements in title V permits. However, in practice, the State did not interpret its regulatory language in this manner and as a result was preparing permits that did not require monitoring sufficient to assure compliance with applicable requirements.

In response to the issues described in the July 7, 1998 letter, Florida initiated rulemaking and submitted revisions to Chapter 62–213, F.A.C. to EPA on July 1, 1999. The following rule changes became state-effective on July 15, 1999:

(1) Rule 62–213.420, F.A.C. was amended to clarify that the State may require additional periodic monitoring related information in the title V permit application in order to better evaluate the sufficiency of the monitoring requirements; and, (2) Rule 62–213.440, F.A.C. was amended to require the inclusion of periodic monitoring requirements in title V permits, to clarify what constitutes sufficient monitoring, to state the conditions under which monitoring records must be retained, and to provide examples of applicable requirements that contain sufficient monitoring requirements.

EPA believes that the changes described in this portion of the notice are appropriate and it is therefore proposing to approve these regulatory changes along with the State's Title V program final full approval.

What Is involved in This Final Action?

The Florida Department of Environmental Protection has fulfilled the conditions of the interim approval granted on September 25, 1995, and EPA is proposing full approval of the State's operating permit program. EPA is also proposing approval of other program changes made by the State since the interim approval was granted.

Administrative Requirements

I. Request for Public Comments

EPA requests comments on the program revisions discussed in this proposed action. Copies of the Florida submittals and other supporting documentation used in developing the proposed full approval are contained in a docket maintained at the EPA Region 4 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by August 1, 2001.

II. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

III. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.

IV. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

V. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

VI. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that

has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this proposed approval does not create any new requirements, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a 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 (see Union Electric Co. v. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2)).

VIII. Unfunded Mandates Reform Act of 1995

Under sections 202 of the Unfunded Mandates Reform Act of 1995, 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 this proposed approval action 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 proposed 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 proposed action.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This proposed action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

X. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this proposed action must be filed in the United States Court of Appeals for the appropriate circuit by August 31, 2001. Filing a petition for reconsideration by the Administrator of this proposed 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) of the CAA.]

XI. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the CAA. Therefore, the requirements of section 12(d) of NTTAA do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 22, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–16570 Filed 6–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7004–4]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Arcanum Iron & Metal Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region V is issuing a notice of intent to delete the Arcanum Iron & Metal Superfund Site (AIM Site) located in Arcanum, Twin Township, Drake County, Ohio from the National Priorities List (NPL) and requests public