into the South Carolina SIP, and therefore satisfy the first criterion for Federal enforceability.

The second criterion for a state's construction and 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. SCAPCR 61–62.1 Section II imposes a legal obligation that construction and operating permit holders adhere to the terms and limitations of the construction or operating permit intended to be Federally enforceable. Every construction and operating permit must include all applicable State and Federal requirements. In addition, the permits must include monitoring, recordkeeping, efficiency levels for add-on air pollution control devices, and other provisions to show compliance with the terms and conditions of the construction/operating permit. Hence, the second criterion for Federal enforceability is met.

The third criterion for a state's construction and operating permit program to be Federally enforceable is that the state construction and operating permit program must require that all emissions limitations, controls, and other requirements imposed by the permit 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 Act). SCAPCR 61–62.1 Section II G(8)(b)(vii) mandates that every construction and operating permit that a facility intends to be Federally enforceable must include all applicable State and Federal requirements. SIP requirements are applicable Federal requirements and therefore, will not be waived or made less stringent since they must be included in any permit intended to be Federally enforceable. Therefore, the third criterion for Federal enforceability is met.

The fourth criterion for a state's construction and operating permit program to be Federally enforceable is that limitations, controls, and requirements in the operating permits be permanent, quantifiable, and otherwise enforceable as a practical matter. SCAPCR 61–62.1 Section II G(4)(f) includes a verbatim incorporation of this requirement. Also, 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. Therefore, the fourth criterion for Federal enforceability is met.

The fifth criterion for a state's construction and operating permit program to be Federally enforceable is providing EPA and the public with timely notice of the proposal and issuance of such permits, 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. SCAPCR 61–62.1 Section II G(5)(a) requires that a permit intended to be Federally enforceable shall be provided to EPA and the public for a period of 30 days prior to its issuance. In addition, if the State determines that a public hearing is required the State will give notice of a public hearing 30 days before it occurs. SCAPCR 61–62.1 Section II G(4)(g) requires DHEC to provide to EPA on a timely basis a copy of each proposed (draft permit) or final permit intended to be Federally enforceable. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review under the South Carolina FESCOP program will not be Federally enforceable. Hence, the fifth criteria for Federal enforceability is met.

In addition to meeting the five criteria for issuance of Federally enforceable construction and operating permits, the State provides for the issuance of Federally enforceable general permits which may cover several air pollution sources in a source category with one permit. These regulations mirror the part 70 regulations found at 40 CFR 70.6(d) which govern the issuance of title V general permits.

In addition to requesting approval into the SIP, South Carolina also requested on July 12, 1995, approval of its FESCOP program under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAPs through the issuance of Federally enforceable state construction and 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 FESCOP 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 FESCOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA 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.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FESCOP 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 currently anticipates that these regulatory criteria, as they apply to FESCOP programs, will mirror those set forth in the June 28, 1989, Federal Register document. The EPA also anticipates that since FESCOP 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 potential to emit of HAPs 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