

sampling ports with access and the installation, maintenance and use of monitoring equipment as well as be required to maintain records to show compliance with applicable emission standards. Therefore, the Mississippi FESOP program satisfies the fourth criteria for Federal enforceability.

The fifth criteria for a state's operating permit program to become Federally enforceable is to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. Regulation APC-S-2, Section V provides a 30 day opportunity for public comment period as well as the opportunity for a public hearing on any application where MDEQ believes there is sufficient interest. Regulation APC-S-2, Section V.C provides that "the Permit Board may provide notice to the public and provide opportunity for public comment on any application for a Construction Permit or Operating Permit." EPA notes that any permit which has not gone through an opportunity for public comment and EPA review in the Mississippi FESOP program will not be Federally enforceable.

In addition to requesting approval into the SIP, Mississippi 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 FESOP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM-10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).¹ However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** notice, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, notice does not address HAP 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, notice, a FESOP 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 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 currently anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, notice. The EPA currently 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 believes it has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. 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, 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. EPA is therefore approving Mississippi's FESOP program

so that Mississippi may begin to issue FESOP as soon as possible.

EPA believes that Mississippi's FESOP program meets the approval criteria specified in the June 28, 1989 **Federal Register** notice and in section 112(l)(5) of the CAA. As discussed previously in this notice, Mississippi's FESOP program meets the five criteria necessary for Federal enforceability.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Mississippi's FESOP program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, notice is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes Mississippi has demonstrated that it can provide for 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 FESOP will be issued since Mississippi has administered a minor source operating permit program for several years. EPA will monitor Mississippi's implementation of its FESOP to ensure that adequate resources are in fact available. EPA also believes that Mississippi's FESOP program provides for an expeditious schedule for assuring 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 Mississippi'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 it is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

With the addition of these provisions, Mississippi's FESOP program satisfies all the requirements listed in the June 28, 1989, **Federal Register** notice. EPA is approving this revision to the State of Mississippi's SIP thus making the State's FESOP program Federally enforceable.

¹ The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.