

**Register** of June 28, 1989 (54 FR 27274). FESOP programs must satisfy five principal requirements: (1) the regulations must be approved into the SIP, (2) sources must have a legal obligation to comply with permit terms and USEPA must be authorized to deem as "not federally enforceable" those permits which it finds fail to satisfy applicable requirements, (3) the program must require all limits to be at least as stringent as other applicable requirements, (4) the permit provisions must be permanent, quantifiable, and otherwise enforceable as a practical matter, and (5) the permits must have been subject to public notice and review. Use of FESOPs for limiting hazardous air pollutants is further subject to requirements in section 112(l) of the Clean Air Act, which is also discussed below. Also discussed below is a policy memorandum entitled "Guidance on Limiting Potential to Emit in New Source Permitting," dated June 13, 1989, and a 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.

The first requirement for approval of Minnesota's FESOP program is satisfied by virtue of today's approval of Minnesota's regulations into the SIP.

The second requirement contains two parts. With respect to sources' legal obligations, Minnesota's rules satisfy the requirement by requiring each permit to state that "Any [noncompliance with permit conditions] constitutes a violation of the state law and, if the provision is federally enforceable, of the [Clean Air Act, and] is grounds for enforcement action."

With respect to the authority granted to USEPA to deem permits "not federally enforceable," the technical support document provides a detailed interpretation of Minnesota's rules on this issue both for the time period during permit review and for the time period subsequent to permit issuance. For the permit review period, the State rules specify that Minnesota "shall not issue [such a permit] if the administrator objects to its issuance in writing [during the specified review period]." For the period after the permit has been issued, USEPA interprets Minnesota's rules to allow avoidance of otherwise applicable permitting requirements only if a permit condition provides a federally enforceable limit on a source's potential to emit, which USEPA would be authorized to determine. Thus, in summary, USEPA is authorized to deem permits not

federally enforceable both during and after the permit review period.

With respect to the third requirement, Rule 7007.0800 ("Permit Content") explicitly requires that permits "shall include emissions limitations, operational requirements, and other provisions needed to ensure compliance with all applicable requirements \* \* \*." No provision in the State rules authorizes any relaxation from any applicable requirement.

With respect to the fourth requirement, enforceability is mostly to be provided on a permit-by-permit basis, particularly by writing practical and quantitative enforcement procedures into each permit. USEPA will review enforceability of permits using the above cited memorandum entitled "Guidance on Limiting Potential to Emit in New Source Permitting," which describes the types of limitations that reduce potential to emit in a federally enforceable manner. Nevertheless, enforceability also requires proper permit program design. Minnesota's regulations (for example Rule 7007.0800 quoted above) provide for fully enforceable limitations. Concerning permanence, Rule 7007.0450 (2) expressly provides for permanence of "title I conditions," thereby assuring permanence of conditions relating to new source review. Pursuant to Rule 7007.0800 (15), Title I conditions in each permit will be identified as such. Other conditions have the duration provided for under Title V, i.e., they expire with permit expiration but are typically renewed with permit reissuance. Consequently, Minnesota's rules provide for the degree of permanence necessary for enforcement of the applicable provisions, and more generally provide for permit limitations to be fully enforceable.

With respect to the fifth requirement, Minnesota's rules have explicit requirements for public notice and review of proposed permitting actions. Of particular concern here are provisions that apply to permitting actions that establish limits to avoid major source permitting requirements ("synthetic minor permits"), both with respect to new source and to existing source permitting requirements. In both cases, Rule 7007.0850 provides for a 30-day public comment period. For most minor source permits, including existing source "synthetic minor permits," Rule 7007.0850 (2) allows the State to publish notice in the State Register rather than in a local newspaper. This approach is provided for in USEPA regulations for major existing source permits under Title V

(i.e., the regulations published at 40 CFR 70), and so this approach is also considered acceptable for synthetic minor existing source permits. For minor source permitting that involves "title I conditions," defined in Rule 7007.0100 (25) to include major new source permit conditions, permit conditions established to help meet air quality standards, and synthetic minor permit conditions, further requirements apply. Specifically, Rule 7007.0850 (4) requires that such permit actions "comply with all other federal requirements for public participation." The Federal requirements for new source permitting include prominent advertisement of the proposed permit, i.e., newspaper publication, which would thus also be a requirement of Rule 7007.0850. Rule 7007.0850 (2)(B) also stipulates that major amendments to State permits (including "major modifications" as defined in USEPA's new source review regulations as well as "synthetic minor modifications"), have the same notice and comment requirements as State permit issuance, "if authorized or required by the administrator." USEPA clearly authorizes and requires full notice and opportunity for public comment in cases of major and synthetic minor modifications. In summary, newspaper notice is a requirement for major and synthetic minor new source permitting under Federal regulations and therefore also under Minnesota Rule 7007.0850(4). In addition, USEPA "authorizes and requires" full notice and opportunity for public comment for major and synthetic minor modifications, which is therefore also required in these cases under Minnesota Rule 7007.0850 (2)(B). Given these interpretations, Minnesota's rules require full satisfaction of relevant notice and comment requirements.

In addition to meeting the criteria in the June 28, 1989, notice, a FESOP program for HAPs must meet the statutory criteria for approval under section 112(l)(5). This section allows USEPA to approve a program only if it (1) contains adequate authority to assure compliance with any section 112 standard or requirement, (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 Act. The memorandum cited above dated January 25, 1995, provides further discussion of these criteria and of the extent to which limits on criteria pollutants such as volatile organic compounds and