emissions of hazardous air pollutants (HAP) if the program were approved pursuant to section 112(l) of the Act. Approval under section 112(l) is necessary because SIP approval extends only to the control of criteria pollutants, i.e., those for which primary and secondary ambient air quality standards have been established by EPA pursuant to section 109 of the Act.1 Federally enforceable limits on criteria pollutants may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).<sup>2</sup> As a legal matter, no additional program approval by EPA is required in order for these criteria pollutant limits to be recognized as federally enforceable. However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

## **EPA Evaluation and Action**

The Arizona Department of Environmental Quality submitted Pinal's synthetic minor permit program on August 15, 1994 for approval into the SIP. The EPA found this submittal to be complete on September 1, 1994. Pinal submitted the program for approval under section 112(l) on October 25, 1994. Pinal's synthetic minor permit program is based on provisions (adopted August 11, 1994) that allow a source to apply voluntarily for limits on emissions, production or operation to be placed in its permit to limit the source's total potential emissions. These provisions are contained within District permitting regulations (adopted November 3, 1993) that apply to both major and nonmajor sources and that provide for the issuance of integrated construction and operating permits. These permit regulations require sources that modify or construct to first obtain a permit that contains both preconstruction and operating requirements. The regulations also require all existing sources to apply for an operating permit. Therefore, new, modifying, and existing sources are eligible to obtain voluntary limits under Pinal's synthetic minor provisions.

The voluntary limits established pursuant to Pinal's synthetic minor provisions will be specifically designated as federally enforceable in the permit. When the permit is issued pursuant to either the District's EPA-

approved Title V or New Source Review program, the entire permit will be federally enforceable, except for those requirements that are enforceable only by the District and/or State and that Pinal specifically designates as not being federally enforceable. When the permit is issued to existing sources pursuant to the District's nonmajor source operating permit program, only federal applicable requirements and voluntary limits that are designated as such pursuant to section 3-1-084 will be federally enforceable since the District's nonmajor source operating permit program is not approved into the SIP by EPA. Pinal is not seeking to receive approval of its program such that all permits issued under the approved program are federally enforceable. Rather, Pinal is seeking approval of a rule that allows for federally enforceable terms and conditions, accepted voluntarily, to be placed in source construction and operating permits. The EPA interprets the June 28, 1989 Federal Register notice cited above to apply to approval of synthetic minor rules that provide for creating distinct federally enforceable limits in permits, as well as to approval of synthetic minor rules that provide for the issuance of permits that are federally enforceable in their entirety.

Though Pinal has submitted a number of regulations relating to the issuance of permits as a revision to its portion of the Arizona State Implementation Plan, today's action extends only to those provisions that pertain to the creation of voluntarily accepted federally enforceable emission limits. These provisions include section 3-1-084 which provides for establishing the federally enforceable emission, production, and operational limits in the source permit along with associated federally enforceable compliance requirements such as monitoring, recordkeeping, and reporting requirements. This provision also requires review of each permit by EPA as well as an opportunity for public comment pursuant to the public participation procedures in section 3-1-107. This action also extends to these public participation procedures as well as to a number of definitions in section 1-3-140 and to the requirement of section 3–1–081(A)(8)(a) that sources comply with the terms and conditions of the permit that contains the voluntarily accepted federally enforceable conditions. The EPA will take action on the remainder of the District's August 15, 1994 submittal at a future date.

The June 28, 1989 **Federal Register** notice specifies the following five

approval criteria for approving FESOP programs into the SIP: (1) The program must be submitted to and approved by EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989 criteria or EPA's underlying regulations shall be deemed not federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits that are intended to be federally enforceable must be issued subject to public participation and must be provided to EPA in proposed form on a timely basis. 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. Hence, EPA believes that these five criteria are also appropriate for evaluating and approving synthetic minor permit programs under section 112(l)

In addition to meeting the criteria in the June 28, 1989 notice, a synthetic minor permit 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 Act.

The 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 Act. (See 58 FR 62262) November 26, 1993.) The 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 also 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. The EPA believes it has authority under

<sup>&</sup>lt;sup>1</sup> The following are considered criteria pollutants: oxides of nitrogen, lead, ozone precursors, sulfur dioxide, carbon monoxide, and PM-10.

<sup>&</sup>lt;sup>2</sup> See "Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act," from John Seitz, dated January 25, 1995. EPA intends to issue further technical guidance on ensuring that the "effect" of limiting HAP is enforceable as a practical matter.