

pursuant to section 112(l) prior to the Subpart E revisions will have had to meet these criteria, and hence, will not be subject to any further approval action.

The 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 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, the EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address all instances of approval under section 112(l). Given the severe timing problems posed by impending deadlines set forth in MACT standards and for submittal of title V applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to issuance of a rule specifically addressing this issue.

EPA proposes approval of Mojave Desert's synthetic minor program pursuant to section 112(l) because the program meets all of the approval criteria specified in the June 28, 1989 **Federal Register** notice and in section 112(l)(5) of the Act. Please refer to the Technical Support Document for a complete discussion of how the June 28, 1989 criteria are met by the Mojave Desert. Regarding the statutory criteria of section 112(l)(5) referred to above, the EPA believes Mojave Desert's synthetic minor program contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989 notice is met: the program does not provide for waiving any section 112 requirement. Sources would still be required to meet section 112 requirements applicable to non-major sources. Furthermore, EPA believes that Mojave Desert's synthetic minor program provides for an expeditious schedule for assuring compliance because it allows a source to establish a voluntary limit on potential to emit and avoid being subject to a federal Clean Air Act requirement applicable on a particular date. Nothing in Mojave Desert's program would allow a source to avoid or delay compliance with a federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, Mojave Desert's synthetic minor program is consistent with the objectives of the section 112 program because its purpose is to enable

sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. The EPA believes this purpose is consistent with the overall intent of section 112, which is to decrease the amount of HAP being emitted; by committing to stay below a certain emission level for HAP, a source with a synthetic minor permit is achieving this goal.

### III. Administrative Requirements

#### A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of Mojave Desert's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional 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 interim approval. The principal 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. The EPA will consider any comments received by August 2, 1995.

#### B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

#### C. Regulatory Flexibility Act

The EPA's actions under sections 502, 110, and 112 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

#### Unfunded Mandates

Under Section 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 proposed approval action promulgated today 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 federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

#### List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

#### 40 CFR Part 70

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

**Authority:** 42 U.S.C. 7401-7671q.

Dated: June 23, 1995.

**David P. Howekamp,**

*Acting Regional Administrator.*

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#### 40 CFR Part 70

[KS-001; AD-FRL-5252-2]

#### Clean Air Act Proposed Full Approval of Operating Permits Program; State of Kansas, and Delegation of 112(l) Authority

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed full approval.

**SUMMARY:** The EPA proposes full approval of the Operating Permits Program submitted by the state of Kansas, for the purpose of complying with Federal requirements for states which develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. This notice explains EPA's rationale for the proposed action, and identifies several revisions to the program which must be made before EPA can take final action to approve it.