

programs in conjunction with title V operating permits programs to enable sources to limit their PTE to below the title V applicability thresholds. (See the guidance document entitled, "Limitation of Potential to Emit with Respect to Title V Applicability Thresholds," dated September 18, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, the EPA announced in a guidance document entitled, "Approaches to Creating Federally Enforceable Emissions Limits," signed by John S. Seitz, Director, OAQPS, that this mechanism could be extended to create Federally enforceable limits for emissions of HAP if the program were approved pursuant to section 112(l) of the CAA.

EPA believes that the five approval criteria for approving FESOP and FELOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l) of the CAA. The June 28, 1989, document 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, the following five criteria are applicable to FESOP and FELOP approvals under section 112(l): (1) The program must be submitted to and approved by the 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 the 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.

In addition to meeting the criteria in the June 28, 1989, document, a FESOP or FELOP 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 and FELOP 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 further anticipates that these regulatory criteria, as they apply to FESOP and FELOP programs, will mirror those set forth in the June 28, 1989, document. EPA further anticipates that since FESOP and FELOP 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 PTE 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, 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 PTE prior to promulgation of a rule specifically addressing this issue. EPA is therefore approving the Alabama FESOP program and the Knox County FELOP program under section 112(l) of the CAA now so that these agencies may begin to issue permits limiting the PTE of HAP as soon as possible.

The Alabama FESOP program and the Knox County FELOP program meet the approval criteria specified in the June 28, 1989, **Federal Register** document and in section 112(l)(5) of the Act. Specific discussion of how Alabama's

FESOP program meets the requirements for Federal enforceability may be found in the **Federal Register** document approving Alabama's FESOP program for criteria pollutant purposes. See 59 FR 52947. Specific discussion of how Knox County's FELOP program meets the requirements for Federal enforceability may be found in the **Federal Register** notice approving Knox County's FELOP program for criteria pollutant purposes. See 59 FR 54523.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes that the Alabama FESOP program and the Knox County FELOP program contain adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, document is met, that is, because the programs do 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 that Alabama and Knox County have demonstrated that ADEM and KCDAPC can provide for adequate resources to support the administration of both programs. EPA expects that resources will continue to be adequate to administer the Alabama FESOP program and the Knox County FELOP program since ADEM and KCDAPC have been administering operating permit programs for a number of years. EPA will monitor the implementation of both programs to ensure that adequate resources are in fact available. EPA also believes that the two programs provide 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 PTE to avoid being subject to a CAA requirement applicable on a particular date. Nothing in either of these programs 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 PTE.

#### Final Action

In this action, EPA is approving the use of Alabama's FESOP program for the issuance of FESOP for HAP regulated under section 112 of the CAA. EPA is also approving the use of Knox County's