

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.

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.) EPA also anticipates given that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, document. 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 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 could 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, 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.

Therefore, EPA is approving the North Carolina, Forsyth County, and the Western North Carolina minor source operating permit program now to allow these agencies to begin issuing FESOP and FELOP as soon as possible.

EPA believes that the North Carolina, Forsyth County, and the Western North Carolina FESOP and FELOP programs

meet the approval criteria specified in the June 28, 1989, **Federal Register** document and in section 112(l)(5) of the Act. As discussed previously in this notice, the North Carolina, Forsyth County, and Western Carolina minor source operating permit programs meet the five criteria necessary for Federal enforceability.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes that the North Carolina, Forsyth County, and Western Carolina minor source operating permit programs 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 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 that North Carolina, Forsyth County, and Western Carolina have demonstrated that each agency can provide for adequate resources to support the FESOP and FELOP program. EPA expects that since North Carolina, Forsyth County, and Western Carolina have administered a minor source operating permit program for several years resources will continue to be adequate to administer the FESOP or FELOP program. EPA will monitor the implementation of each Agency's FESOP or FELOP to ensure that adequate resources are in fact available. EPA also believes that the North Carolina, Forsyth County, and Western Carolina FESOP or FELOP 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 potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in any 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 Act 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, the North Carolina, Forsyth County, and Western Carolina minor source operating permit program satisfies all the requirements listed in the June 28,

1989, **Federal Register** document. Therefore, EPA is approving this revision to the State of North Carolina's SIP allowing the State and local agency to issue FESOP and FELOP.

Final Action

In this action, EPA is approving the North Carolina, Western Carolina, and Forsyth County minor source operating permit program into the North Carolina SIP to allow the State and local agencies to issue FESOP and FELOP. EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 26, 1995 unless by August 28, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

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

Nothing in this action shall be construed as permitting or allowing or