unauthorized acts is subject to administrative discipline and may be subject to criminal prosecution leading to fine, imprisonment, or both. An employee having a question about proper security procedures that is not clearly and specifically answered by postal regulations or by written direction of the Inspection Service or Law Department shall resolve the question by protecting the Messages in all respects and delivering them, or letting them be delivered, without interruption to their destination.

(b) Interception, Searching, or Reading of Messages Generally Prohibited.

(1) General.

In general, no employee may intercept, search, read, or divulge the contents of any Message submitted for Electronic Postmarking, even though such Message may be believed to contain criminal matter or evidence of the commission of a crime. The only exception to this general rule is for a person executing a search warrant duly issued under Rule 41 of the Federal Rules of Criminal Procedure. Usually, a warrant issued by a Federal Court or service by a Federal Officer is issued under Rule 41, and is duly issued if signed and dated within the past 10 days. No employee shall permit the execution of a search warrant issued by a state court and served by a state officer.

(2) Disclosure of Information Collected from Messages Sent or Received by Customers. Except as provided in § 701.14(b)(1), no employee in the performance of official duties may disclose information collected from Messages processed by the Postal Service Electronic Postmark Processor, including any information about a Message processed by the Postal Service.

(3) Interference with Operation of Postal Computers.

Interference by any person with the operation of Postal Service data processing equipment, including the Postmark Processor, is strictly prohibited.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–19102 Filed 8–13–96; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5552–7]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of New Hampshire for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also approving the State's authority to implement hazardous air pollutant requirements.

DATES: Comments on this proposed action must be received in writing by September 13, 1996.

ADDRESSES: Comments should be addressed to Ida E. Gagnon, Air Permits Program, CAP, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211.

Copies of the State's submittal and other supporting information relevant to this action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, Air Permits Program, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–3500.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it will extend for two years following the effective date of final interim approval, and cannot be renewed. During the interim approval period, the State of New Hampshire is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal permits program for the State of New Hampshire. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources specified in section 503(c) of the Act begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.[1]

Following final interim approval, if the State of New Hampshire fails to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA will start an 18-month clock for mandatory sanctions. If the State of New Hampshire then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of New Hampshire has corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the State of New Hampshire still has not submitted a corrective

[1] Note that states may require applications to be submitted earlier than required under section 503(c). See Env-A 609.05(d).

program that EPA finds complete, a second sanction will be required.

If, following final interim approval, EPA disapproves the State of New Hampshire's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of New Hampshire has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. If, six months after EPA applies the first sanction, the State of New Hampshire has not submitted a revised program that EPA has determined corrected the deficiencies that prompted disapproval, a second sanction will be required.

Moreover, if EPA has not granted full approval to a State of New Hampshire program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of New Hampshire upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Air Resource Division Director of the State of New Hampshire (Designee of the Governor) submitted an administratively complete title V Operating Permits Program (PROGRAM) on October 26, 1995. EPA deemed the PROGRAM administratively complete in a letter to the Commissioner dated November 22, 1995. The PROGRAM submittal includes a description of how the State intends to implement the PROGRAM and legal opinions from the Attorney General of New Hampshire stating that the laws of the State provide adequate authority to carry out the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, permit application forms, a data management system and a fee adequacy demonstration.

2. Regulations and Program Implementation

The State of New Hampshire has submitted Env-A 600 entitled ''Statewide Permit System'' for implementing the State Part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of procedurally correct adoption is included in Section III of the submittal.

The New Hampshire operating permits regulations follow Part 70 very closely. The following requirements, set out in EPA's Part 70 operating permits program review are addressed in Section III of the State's submittal.

The New Hampshire PROGRAM, including the operating permits regulations, substantially meets the requirements of 40 CFR Part 70, including §§ 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5 and 70.6 with respect to permit content and operational flexibility; §§ 70.5 with respect to complete application forms and criteria which define insignificant activities; §§ 70.7 and 70.8 with respect to public participation, minor permit modifications, and review by affected states and EPA; and § 70.11 with respect to requirements for enforcement authority. Although the PROGRAM substantially meets Part 70 requirements, there are program deficiencies that are outlined in section II.B. below as Interim Approval issues. Those Interim Approval issues are more fully discussed in the Technical Support Document, dated November 6, 1995 and entitled ''Technical Support Document—New Hampshire Operating Permits Program'' (''TSD''). The TSD also contains a detailed discussion of elements of Part 70 that appear in New Hampshire's title V program regulations but which are in need of some clarification. That clarification is provided by EPA in the TSD and by the New Hampshire Attorney General's Office by a legal Opinion supplementing the State's original submittal.

Prompt Reporting of Deviations From Permit Requirements

Part 70 of the operating permits regulation requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. The State of New Hampshire has not defined ''prompt'' in its program with respect to reporting of deviations. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

Definition of ''Title I Modification''

New Hampshire's definition of ''title I modification'' does not include changes reviewed under a minor source preconstruction review program (''minor NSR changes''). In an August 29, 1994 rulemaking proposal, EPA explained its view that the better reading of ''title I modifications'' includes minor NSR. However, the Agency solicited public comment on whether the phrase should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act. (59 FR 44572, 44573). This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act.

The EPA has not yet taken final action on the August 29, 1994 proposal. However, in response to public comment on that proposal, the Agency has decided that the definition of ''title I modifications'' is best interpreted as not including changes reviewed under minor NSR programs. EPA included this interpretation in a supplemental rulemaking proposal published on August 31, 1995. 60 FR 45530, 545–546. Thus, New Hampshire's definition of ''title I modification'' is fully consistent with EPA's current interpretation of Part 70.

In the August 29, 1994 proposal (59 FR 44572) the Agency stated that if, after considering the public comments, it determined that the phrase ''title I modifications'' should be interpreted as including minor NSR changes, the Agency would revise the interim approval criteria as needed to allow states with a narrower definition to be eligible for interim approval. If EPA should conclude, during the final rulemaking on the August 29, 1994 (59 FR 44572) and August 31, 1995 (60 FR 45530, 545–546) proposals, that Title I modifications should be read to include minor NSR, it will identify the narrow definition of Title I modification as an interim approval condition on New Hampshire's program at the appropriate time.

Variances

New Hampshire has the authority to issue a variance from certain regulatory

requirements imposed by State law. *See* Env-A 207 and RSA 125–C:16. The EPA regards New Hampshire's variance provisions as wholly external to the program submitted for approval under Part 70 and consequently is proposing to take no action on these provisions of State law. The EPA has no authority to approve provisions of State law that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable Part 70 permit, except where such relief is granted through procedures allowed by Part 70. A Part 70 permit may be issued or revised (consistent with Part 70 procedures), to incorporate those terms of a variance that are consistent with applicable requirements. A Part 70 permit may also incorporate, via Part 70 permit issuance or revision procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

Audit Privilege and Penalty Waiver Legislation

The Clean Air Act sets forth the minimum elements required for approval of a State operating permits program, including the requirement that the permitting authority has adequate authority to assure that sources comply with all applicable CAA requirements as well as authority to enforce permits through recovery of minimum civil penalties and appropriate criminal penalties. Section 502(b)(5) (A) and (E) of the CAA. EPA's implementing regulations, which further specify the required elements of State operating permits programs (40 CFR Part 70), explicitly require States to have certain enforcement authorities, including authority to seek injunctive relief to enjoin a violation, to bring suit to restrain violations imposing an imminent and substantial endangerment to public health or welfare, and to recover appropriate criminal and civil penalties. 40 CFR 70.11. In addition, section 113(e) of the CAA sets forth penalty factors for EPA or a court to consider for assessing penalties for civil and criminal violations of title V permits. EPA is concerned about the potential impact of some State privilege and immunity laws on the ability of such States to enforce federal requirements, including those under title V of the CAA. Based on review and consideration of the statutory and regulatory provisions discussed above, EPA issued guidance on April 5, 1996, entitled ''Effect of Audit Immunity/ Privilege Laws on States' Ability to Enforce Title V Requirements'' to address these concerns. This guidance outlines certain elements of State audit immunity and privilege laws which, in EPA's view, may so hamper the State's ability to enforce as to preclude approval of the State's title V operating permits program.

New Hampshire has adopted legislation that would provide, subject to certain conditions, for an environmental audit ''privilege'' for voluntary compliance evaluations performed by a regulated entity. New Hampshire's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the State and takes prompt and appropriate measures to remedy the violations.

New Hampshire's audit privilege legislation excludes from the scope of the privilege all ''[d]ocuments, communications, data, reports, or other information required to be collected, developed, maintained, reported, or otherwise made available to a regulatory agency pursuant to an environment law.'' Such information is ''non-privileged'' under the terms of the legislation. Thus, EPA is not listing any conditions on New Hampshire's title V program approval for this issue because the legislation will not preclude the State from enforcing its title V permit program requirements consistent with the requirements of the CAA. New Hampshire's Attorney General has submitted a legal opinion which supports EPA's understanding that the State title V program requirements for compliance monitoring, reporting of violations, recordkeeping, and compliance certification, together render the privilege inapplicable to compliance evaluations, at a title V source, of the State's title V requirements.

New Hampshire's Attorney General Opinion also addresses the penalty waiver provisions of the audit legislation. Section 147–E:9, II of the legislation excludes certain violations from the scope of the penalty waiver provision. For example, criminal acts committed knowingly, purposefully, or recklessly are not covered by the penalty waiver provision when disclosed to the State. Another category excluded from the scope of the penalty waiver is violations that result in serious harm to human health or the environment. Although the list of excluded violations does not explicitly contain violations that result in a significant economic benefit, violations that are required to be disclosed by law, or violations that result in a serious risk of harm to human health or the environment, New Hampshire's Attorney General Opinion explains that in the context of New Hampshire's title V operating permit program such violations could not qualify for the penalty waiver. In essence, the Attorney General Opinion states that violations of the terms and conditions of State-issued title V permits are excluded from the penalty waiver provision because any such violations would be required to be disclosed by the title V permit itself pursuant to at least one, and possibly all, of the following requirements in New Hampshire's program: (1) the obligation to report promptly any deviations from the terms and conditions of the permit; (2) the obligation to submit monitoring reports no less frequently than semi-annually; and (3) the obligation to submit annual compliance certifications. Hence, these requirements would preclude a title V source from asserting that it ''elected'' (the term used in New Hampshire's legislation) to disclose any such violations to the State, i.e. such disclosure could not be voluntary under State law, a precondition for the applicability of the penalty waiver provisions.

With regard to violations of the requirement to apply for a title V permit, the Attorney General opines that a title V source could not ''elect,'' or volunteer, to disclose the application violation, and so the penalty waiver provisions would not apply. The reasoning in the Attorney General Opinion is as follows. A source is under a continuing obligation, even when failing to apply for a permit on time, to submit to the State information sufficient to enable the State to issue a title V permit. Such information would necessarily contain, or at least include a reference to, information relating to all construction permits and non-title V State operating permits already issued to the source. This information would indicate when the source became a ''major source.'' Moreover, the State already possesses extensive computerized emissions data on each source in the State. These sources of emissions information would enable the State to deduce that the source had

failed to apply for a title V permit in a timely manner. Thus, there is no meaningful sense in which a source could ''elect'' to disclose, or voluntarily disclose, the application violation because the source was required by virtue of the permit application requirement of the State's regulations to submit the source's emissions information (or at least reference existing permits that contain such information) from which the State could deduce on its own that the violation occurred.

The Attorney General Opinion adds that as a practical matter New Hampshire will be aware of a source's failure to apply for a title V permit before the source submits a belated permit application. The Attorney General Opinion asserts that the State has, based on its existing emissions inventory, already identified all sources in the State subject to title V and has notified them of their obligation to apply for a title V permit, and will therefore independently know of any permit application violation that occurs. The Attorney General argues that since New Hampshire's legislation excludes from the scope of the penalty waiver provisions those violations independently discovered by the State, the waiver provisions would not apply to permit application violations because the State would already know of the violation at the time the source belatedly applied.

The Attorney General Opinion also addresses certain hypothetical factual situations and explains why the penalty waiver and privilege provisions of the State legislation would not apply. Those situations involve instances in which a title V source evaluates compliance with a title V permit term or condition in a method different from the compliance method specified in the permit, or evaluates compliance at more frequent time intervals than required by the title V permit. In essence, since any violations discovered in either of the two situations described above would be required to be reported under the terms and conditions of the permit, disclosure of such violations could not be voluntary and hence could not qualify for the penalty waiver or the privilege.

New Hampshire's Attorney General Opinion concludes that the privilege and penalty waiver provisions of New Hampshire's audit legislation are not available to title V permit holders for violations of title V requirements. Based on the Attorney General's discussion of the issues as described above, EPA is not listing conditions on New Hampshire's title V program approval with regard to these issues. However, if New Hampshire's implementation of its title V program is inconsistent with the Attorney General's Opinion or the State's audit legislation is held by the New Hampshire State courts to be applicable to title V violations, EPA reserves its rights to address what would in that event be the State's inability to enforce its title V program consistent with the requirements of the CAA.

The complete program submittal, the TSD, and New Hampshire's Attorney General Opinion are available in the docket for review. The TSD includes a detailed analysis, including a program checklist, of how the State's program and regulations compare with EPA's requirements and regulations.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that the fees collected exceed $25 per ton of actual emissions per year, adjusted from the August, 1989 consumer price index. The $25 per ton was presumed by Congress to cover all reasonable direct and indirect costs to an operating permit program. This minimum amount is referred to as the ''presumptive minimum.''

New Hampshire has opted to make a presumptive minimum fee demonstration. In the fee regulation, the State proposes an emission based fee for calculating the operating permit program fees. This fee is equivalent to at least the Part 70 presumptive minimum fee of $25 per ton of regulated air pollutants, adjusted per the consumer price index (CPI). Using New Hampshire's emission based fee approach, the State is charging a dollar per ton fee of $43.30 starting in 1995 and adjusting it annually by the CPI and an inventory stabilization factor (ISF). The ISF is the quotient of the total statewide stationary source actual emissions as determined from the revised 1993 inventory divided by the total statewide stationary source actual emissions from the previous calendar year. If the ISF computes to a number less than 1, then 1 shall be used as the ISF. New Hampshire's average rate is above the presumptive minimum adjusted by the CPI.

Therefore, New Hampshire has demonstrated that the state is collecting sufficient permit fees to meet EPA's presumptive minimum criteria. For more information, see Attachment E of New Hampshire's title V program submittal.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

New Hampshire has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements for hazardous air pollutants through the title V permit. This legal authority is contained in New Hampshire's enabling legislation and in regulatory provisions defining ''applicable requirements'' and requiring that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow New Hampshire to issue permits that assure compliance with all section 112 requirements.

Therefore, the State of New Hampshire's legal authority is sufficient to allow the State to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities at Part 70 sources. For further rationale on this interpretation, please refer to the Technical Support Document referenced above and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Implementation of 112(g) Upon Program Approval

On February 14, 1995 EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g) New Hampshire must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. EPA believes that New Hampshire can utilize its preconstruction permitting program to serve as a procedural vehicle for implementing section 112(g) rule and making these requirements Federally

enforceable between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. For this reason, EPA is approving New Hampshire's preconstruction permitting program found in Env-A 600, Statewide Permit System, under the authority of title V and Part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations.

Since the approval would be for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval would be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Also, since the approval would be for the limited purpose of allowing the State sufficient time to adopt regulations, EPA is limiting the duration of the approval to 18 months following promulgation by EPA of its section 112(g) rule.

c. Program for Straight Delegation of Section 111 and 112 Standards

Requirements for operating permit program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of hazardous air pollutant requirements under section 112 and standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. EPA is also granting approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated, and section 112 infrastructure programs such as those programs authorized under sections 112(i)(5), 112(g), 112(j) and 112(r) to the extent they apply to sources subject to New Hampshire's title V program regulations. EPA is reconfirming the 40 CFR parts 60 and 61 standards currently delegated to New Hampshire as indicated in Table I.[2] In addition, EPA is proposing to delegate all future 40 CFR part 63 standards to the extent they apply to sources subject to New Hampshire's title V program regulations.[3] EPA is delegating the 40 CFR part 63 standards as indicated in Table II to the extent they apply to sources subject to New Hampshire's title V program regulations.

New Hampshire has informed EPA that it intends to accept future delegation of section 112 standards by checking the appropriate boxes on a standardized checklist. The checklist will list applicable regulations and will be sent by the EPA Regional Office to New Hampshire. New Hampshire will accept delegation by checking the appropriate box and returning the checklist to EPA Region I. The details of this delegation mechanism are set forth in the May 30, 1996 Memorandum of Agreement between New Hampshire and EPA. This program applies to both existing and future standards but is limited to sources covered by the Part 70 program. The original delegation agreement between EPA and New Hampshire was set forth in a letter to Dennis R. Lunderville dated September 30, 1982.

d. Commitment to Implement Title IV of the Act

New Hampshire has committed to take action, following promulgation by EPA of regulations implementing section 407 and 410 of the Act, or revisions to either Parts 72, 74, or 76 or the regulations implementing section 407 or 410, to either incorporate by reference or submit, for EPA approval, New Hampshire Department of Environmental Protection (DEP) regulations implementing these provisions.

B. Proposed Action

The EPA is proposing to grant interim approval to the operating permits program submitted by New Hampshire on October 26, 1995. If promulgated, the State must make the following change to receive full approval:

1. New Hampshire does not allow for ''section 502(b)(10)'' changes at a title V source. In an August 29, 1994 (59 FR 44572) rulemaking proposal, EPA proposed to eliminate section 502(b)(10) changes as a mechanism for implementing operational flexibility. However, the Agency solicited comment on the rationale for this proposed elimination. If EPA should conclude, during a final rulemaking, that section 502(b)(10) changes are no longer required as a mechanism for operational flexibility, then New Hampshire will not be required to address 502(b)(10) changes in its rule.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

The scope of the State of New Hampshire's Part 70 program that EPA is proposing in this notice would apply to all Part 70 sources (as defined in the approved program) within the State of New Hampshire, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. EPA is granting approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

III. Administrative Requirements

A. Opportunity for Public Comments

The EPA is requesting comments on all aspects of the proposed interim approval. Copies of the State's submittal and other information relied upon for

[2] Please note that federal rulemaking is not required for delegation of section 111 standards.

[3] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for Part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under Part 70 for another reason, thus requiring a Part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

the 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 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 September 13, 1996.

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 section 502 of the Act do not create any new requirements, but simply address operating permits 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.

D. 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 action proposed 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 Federal action proposes approving preexisting 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 in 40 CFR Part 70

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

Authority: 42 U.S.C. 7401–7671q.

Dated: July 22, 1996.

John P. DeVillars,

Regional Administrator, Region I.

TABLE I.— RECONFIRMATION OF PART 60 AND 61 DELEGATIONS

Part 60 Subpart Categories	
D	Fossil-Fuel Fired Steam Generators.
Da	Electric Utility Steam Generators.
Db	Industrial-Commercial-Institutional Steam Generating Unit.
Dc	Small Industrial-Commercial-Institutional Steam Generating Unit.
E	Incinerators.
Ea	Municipal Waste Combustors.
I	Asphalt Concrete Plants.
J	Petroleum Refineries.
K	Petroleum Liquid Storage Vessels.
Ka	Petroleum Liquid Storage Vessels.
Kb	Petroleum Liquid Storage Vessels.
L	Secondary Lead Smelters.
M	Secondary Brass and Bronze Production Plants.
N	Basic Oxygen Process Furnaces Primary Emissions.
O	Sewage Treatment Plants.
AA	Steel Plants-Electric Arc Furnaces.
BB	Kraft Pulp Mills.
DD	Grain Elevators.
EE	Surface Coating of Metal Furniture.
GG	Stationary Gas Turbines.
KK	Lead-Acid Battery Manufacturing.
LL	Metallic Mineral Processing Plants.
QQ	Graphic Arts-Rotogravure Printing.
RR	Tape and Label Surface Coatings.
TT	Metal Coil Surface Coating.
VV	Equipment Leaks of Voc in Socmi.
WW	Beverage Can Surface Coating.
XX	Bulk Gasoline Terminals.
BBB	Rubber Tire Manufacturing.
FFF	Flexible Vinyl and Urethan Coating and Printing.
GGG	Equipment Leaks of Voc in Petroleum Refineries.
HHH	Synthetic Fiber Production.
JJJ	Petroleum Dry Cleaners.
OOO	Nonmetallic Mineral Plants.
QQQ	Voc From Petroleum Refinery Waste Water Systems.
SSS	Magnetic Tape Coating.
TTT	Surface Coating of Plastic Parts For Business Machines.
UUU	Calciners and Dryers in the Mineral Industry.
VVV	Polymetric Coating of Supporting Substrates.

TABLE I.— RECONFIRMATION OF PART 60 AND 61 DELEGATIONS—Continued

Part 61 Subpart Categories	
C	Beryllium.
E	Mercury.
J	Equipment Leaks of Benzene.
M	Asbestos.
V	Equipment Leaks (Fugitive Emission Sources).

TABLE II.—DELEGATION OF PART 63 STANDARDS AS THEY APPLY TO NEW HAMPSHIRE'S TITLE V OPERATING PERMITS PROGRAM

Part 63 Subpart Categories	
A	General Provisions.
B	Equivalent Emission Limitation by Permit.
D	Compliance Extensions for Early Reductions.
F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry.
G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
N	National Emission Standards for Chromium Emissions from Hard and Decorative Electroplating and Chromium Anodizing Tanks.
O	Ethylene Oxide Emission Standards for Sterilization Facilities.
Q	National Emission Standards for Hazardous Air Pollutants for Industrial Cooling Towers.
R	National Emission Standards for Organic Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I).
T	National Emission Standards for Halogenated Solvent Cleaning.
W	National Emission Standards for Organic Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
X	National Emission Standards for Organic Hazardous Air Pollutants From Secondary Lead Smelting.
Y	National Emission Standards for Organic Hazardous Air Pollutants for Marine Tank Vessel Loading Operations.
CC	National Emission Standards for Organic Hazardous Air Pollutants: Petroleum Refineries.
GG	National Emission Standards for Organic Hazardous Air Pollutants for source categories: Aerospace Manufacturing and Rework.
JJ	National Emission Standards for Wood Furniture Manufacturing Operations.
KK	National Emission Standards for Printing and Publishing.

[FR Doc. 96–20591 Filed 8–13–96; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–26; RM–8749]

Radio Broadcasting Services; Booneville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of James P. Gray, dismisses the petition for rule making proposing the allotment of Channel 287A at Booneville, Kentucky, as the community's first local aural transmission service *See* 61 FR 9411, March 8, 1996. It is the Commission's policy to refrain from making allotments to a community absent an expression of interest. Therefore, since there has been no such interest expressed here, we dismiss the petitioner's proposal. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–26, adopted July 3, 1996, and released July 12, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–20641 Filed 8–13–96; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–70; RM–8474; 8706]

Radio Broadcasting Services; Moncks Corner, Kiawah Island, and Sampit, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the petition for rule making filed by Ceder Carolina Limited Partnership proposing the substitution of Channel 288C2 for Channel 287C3 at Moncks Corner, South Carolina, the reallotment of Channel 288C2 from Moncks Corner to Kiawah Island, and the modification of Station WNST(FM)'s license accordingly (RM–8474). *See* 59 FR 35082, July 8, 1994. We also deny the counterproposal filed