applicable date (section 172(c)(9)). The City/County submitted both of the above programs, which were fully approved in the FR (Please reference 58 FR 67326–67330, December 21, 1993, for the nonattainment New Source Review (NSR) program approval, and 59 FR 23167–23169, May 6, 1994, for the contingency measures approval). Upon redesignation to attainment, the Prevention of Significant Deterioration (PSD) permitting program will be applicable. City/County's PSD program was approved in the FR on December 21, 1993, at 58 FR 67330–67334. In addition, City/County's preconstruction permit program was approved in the FR on March 15, 1994, at 59 FR 12170–12172, and the winter wood burning program was approved on November 29, 1993, at 58 FR 62535–62539.

IV. Proposed Action

The EPA is proposing to approve the request of the State of New Mexico to redesignate to attainment the Albuquerque CO nonattainment area to attainment status. The EPA is also proposing approval of the vehicle inspection and maintenance program, the 1993 periodic emissions inventory, and the attainment maintenance plan. The EPA will take final action on this notice following analysis of public comments on this proposal.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. §§ 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. § 7410(a)(2)).

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: January 30, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–3583 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 61 and 63

[FRL–5423–8]

Request for Approval of Section 112(l) Delegated Authority; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval and delegation.

SUMMARY: EPA invites public comment on today's proposal to approve the state of Washington Department of Ecology (Ecology) request for delegation of authority to implement and enforce state-adopted hazardous air pollutant regulations which adopt by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained within 40 CFR Parts 61 and 63. EPA as well invites public comment on its proposal to approve specific rules submitted to EPA by Ecology in order to recognize conditions and limitations established pursuant to these rules as federally enforceable. These adopted regulations would be implemented and enforced by both Ecology and the seven local air authorities (The Benton County Clean Air Authority (BCCAA), the Northwest Air Pollution Authority (NWAPA), the Olympic Air Pollution Control Authority (OAPCA), the Puget Sound Air Pollution Control Agency (PSAPCA), the Southwest Air Pollution Control Authority (SWAPCA), the Spokane County Air Pollution Control Authority (SCAPCA), and the Yakima County Clean Air Authority (YCCAA); collectively referred to as ''the Washington permitting authorities'') within the state of Washington.

DATES: All comments on this submittal must be received by the close of business on March 18, 1996.

ADDRESSES: Copies of this submittal are available for inspection and copying during normal business hours at the following addresses: U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, and the State of Washington Department of Ecology, 300 Desmond Drive, Lacey, Washington, 98504. Written comments should be addressed to: Chris Hall, U.S. EPA Region 10, 1200 Sixth Avenue (AT–082), Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Chris Hall at 206–553–1949.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the amended Clean Air Act of 1990 (''the Act'') established new, more stringent requirements upon a state or local agency who wish to implement and enforce an air toxics program pursuant to section 112 of the Act. Prior to November 15, 1990, delegation of the federal NESHAP regulations to the State and Local agencies occurred without formal rulemaking by EPA. The new section 112(l) of the Act requires EPA to approve state and local toxics rules and programs under this authority, through formal notice and comment rulemaking. Now, State and Local air agencies who wish to implement and enforce a federally-approved air toxic program must make a showing to EPA that they have adequate legal authorities and adequate resources to implement and enforce the delegated NESHAP regulations. Approval is granted by the EPA through the authority contained in section 112(l), and implemented through the federal rule found at 40 CFR Part 63, subpart E, if the Agency finds that: (1) The State program or rule is ''no less stringent'' than the corresponding federal rule or program, (2) adequate authority and resources exist to implement the State or Local program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the State or Local program is otherwise in compliance with federal guidance.

II. Discussion of the Washington 112(l) Submittal

On January 5, 1995 (as supplemented on May 8, 1995, October 18, 1995, and January 9, 1996), the Washington permitting authorities submitted to EPA an application requesting delegation of authority to implement and enforce specific 40 CFR Part 61 and Part 63 NESHAP regulations adopted into Washington state and local law [Washington Administrative Codes (WAC) Chapter 173, Division 400, Section 075, as in effect on February 16, 1993; NWAPA Regulation 104.2 as in effect December 8, 1993; PSAPCA Regulation III, Section 2.02 as in effect on October 19, 1995; SWAPCA Regulation 400–075 as in effect on February 1, 1995; and YCCAA Section 12.02 of the Restated Regulation I, as in effect on September 14, 1994].

Contained within the Washington permitting authorities' section 112(l) application are the following documents: a written finding by the State Attorney General and the independent legal counsel for the seven local air authorities stating that the Washington permitting authorities have the legal authority to implement and enforce their state and locally-adopted regulations as well as assure compliance by all sources within their respective jurisdiction; a copy of the relevant state and local regulations, which contain the fully-adopted NESHAP regulations which are to be substituted for the federal NESHAP regulations upon approval, and which contain the permitting requirements for each source subject to them, including the State regulatory order regulations and the State new source review regulations; and complete program descriptions for both Ecology and the seven local air authorities. The full program submittal is available for review for more detailed information.

A. Emission Standards for Hazardous Air Pollutants

Pursuant to 40 CFR 63.91, the Washington permitting authorities are seeking delegated federal authority to implement and enforce 40 CFR Part 61; subparts A, C through F, J, L through P, V, Y, BB, and FF, as adopted into state and local law. EPA has previously delegated authority for 40 CFR Part 61 subparts H and I to the state of Washington Department of Health (see 60 FR 39263, August 2, 1995, ''Interim approval of Delegation Authority; National Emission Standards for Hazardous Air Pollutants; Radionuclides; Washington'').

Three local air agencies, NWAPA, PSAPCA, and SWAPCA are also requesting delegated authority to implement and enforce specific 40 CFR Part 63 NESHAP regulations adopted into local law (see section IV.A which lists the specific 40 CFR Part 63 regulations adopted by these agencies).

B. Voluntary Limits on Emissions

The Washington permitting authorities are also requesting federal approval of specific regulations adopted into state and local law (WAC 173–400–091, 110, 112, 113, and 114, WAC 173–460; NWAPA sections 300 through 303; OAPCA Regulation 1, Article 7; PSAPCA Regulation I, Article 6, and Regulation III, Appendix A; SCAPCA Regulation I, Article II and V; SWAPCA 400–090, –110, –112, –113, and –114; and, YCCAA Restated Regulation I, Sections 4.02 and 12.01) which would allow the Washington permitting authorities to establish federally-enforceable emission limitations by permit for the purpose of limiting a source's potential to emit hazardous air pollutants (HAP) below major source thresholds. On May 8, 1995, the Washington permitting authorities withdrew their request for EPA approval of WAC 173–460 as a federally-enforceable regulation for limiting a source's potential to emit HAP, therefore EPA will not be proposing to take any action in regard to this rule. Additionally, since EPA has previously approved the provisions of WAC 173–400–091 as a mechanism for limiting a sources potential to emit HAP under the authority of section 112(l), it is not necessary to take any further action in regard to this rule (see 60 FR 28726, June 2, 1995, ''Approval and Promulgation of State Implementation Plans: Washington Approval of Section 112(l) Authority; Operating Permits; Washington'').

If approved, these state and local potential-to-emit (PTE) regulations (including WAC 173–400–091 which has already been approved under section 112(l)) would provide the mechanism for the owner or operator of a source to apply for and obtain federally-enforceable conditions that would limit their potential to emit HAP. Such limitations would be contained in a permit issued by Ecology or one of the seven local air authorities, after public notice and an opportunity for comment, and would include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with these limitations. As mentioned previously, if approved, limits established pursuant to these regulations would be considered federally-enforceable, providing the Washington permitting authorities with the ability to set limits which would be sufficient to exempt a source from the requirement to obtain a WAC 173–401 issued operating permit and/or comply with federal, state or local hazardous air pollutant regulations. Approval under section 112(l) is necessary because the Washington SIP-approved rules extends solely to the control of criteria pollutants. Federally-enforceable limits on criteria pollutants (i.e., volatile organic compounds or particulate matter) may have the incidental effect of limiting emissions for the majority of the HAPs listed pursuant to section 112(b), however, section 112 of the Act provides the underlying authority for establishing federally-enforceable limits for all HAP emissions.

C. Section 112(g)

As part of their original delegation request the Washington permitting authorities requested approval for specific state and locally-adopted regulations for the purpose of implementing section 112(g) of the Act (WAC 173–400–110, –112, –113, and

–114, and WAC 173–460; NWAPA Regulations sections 300 through 303; OAPCA Regulation 1, Article 7; and PSAPCA Regulation I, Article 6, and Regulation III, Appendix A). On May 8, 1995, the Washington permitting authorities officially withdrew their request for approval of these rules for the purposes of implementing section 112(g); therefore EPA will not be taking any action in regard to section 112(g).

III. Authority and Commitments for Section 112 Implementation

Under 40 CFR 63.91 the minimum documentation needed to be provided to EPA for a straight delegation request are: (1) A written finding by the State attorney general (and the independent legal counsel for the Local air authorities) confirming that the State (Local) has adequate legal authorities to implement and enforce the State (Local) rule(s) or program(s); (2) copies of the State and/or Local statutes, regulations and other documents which contain the appropriate provisions for which the State and/or Local are requesting delegation; (3) a demonstration of adequate resources to implement and enforce all aspects of the delegated rules or program; (4) a schedule demonstrating expeditious implementation of the delegated rules or program; (5) a plan that assures expeditious compliance by all sources; and, (6) a demonstration of adequate legal authority to implement and enforce all delegated rules or program and to assure compliance by all sources upon approval.

A. Written Findings by Legal Counsel

40 CFR 63.91 (b)(1) and (b)(6) requires that at a minimum a state and/or local agency requesting section 112(l) delegation have the following authorities: (1) Enforcement authorities that meet the requirements of 40 CFR 70.11 of this chapter; (2) authority to request information from regulated sources regarding their compliance status; (3) authority to inspect sources and any records required to determine a source's compliance status; and (4) if the State delegates authorities to a Local agency, the state must retain enforcement authority unless the Local agency's authorities meet the requirements of 40 CFR 70.11 of this chapter.

The Washington permitting authorities have provided to EPA legal opinions from both the Washington state Attorney General's office and the independent legal counsel for the seven local air authorities which clearly outline their enforcement authorities as they pertain to the requirements of 40 CFR 63.91(b)(1) and (b)(6). EPA has previously reviewed Washington's civil and criminal enforcement authorities contained in the Revised Code of Washington (RCW) where EPA determined that the authorities in RCW 70.94.430 do not fully meet the requirements of 40 CFR 70.11 and therefore 40 CFR 63.91 (see 59 FR 42552, August 18, 1994, for a detailed explanation of this issue). However, although EPA believes that Washington's criminal authorities do not fully meet 40 CFR 70.11 requirements, EPA has granted a two-year interim approval of the Washington permitting authorities 40 CFR Part 70 operating permit programs, effective December 9, 1994, thereby allowing the state of Washington until December 9, 1996, to correct their statutory deficiencies.

The Washington permitting authorities would implement and enforce the delegated federal regulations throughout the State of Washington under the authority of RCW 70.94. RCW 70.94.331(3) gives the seven local air authorities authority to implement and enforce WAC 173–400 and –401, or adopt their own more stringent rules.

B. Copies of State Statutes and Regulations

Complete copies of WAC 173–400, WAC 173–401, and RCW 70.94; BCCAA regulation 1, NWAPA sections 104, 200, 300–303, 320–324, and 326; OAPCA regulation 1, article 7; PSAPCA regulation I–III; SCAPCA regulation I, article II and V; SWAPCA 400 and 401; and YCCAA regulation I sections 4.02, 12.01 and 12.02; have been provided to EPA as required by 40 CFR 63.91(b)(2). In addition, OAPCA Regulation I, Article 5 was provided to EPA with the Washington permitting authorities Title V application submittal.

C. Demonstration of Adequate Resources

40 CFR 63.91(b)(3) requires the State and Local to provide for adequate resources to implement and enforce all aspects of the delegated program or rule. Specifically, 40 CFR 63.91(b)(3) requires a State to provide: (1) A description in narrative form of the scope, structure, coverage, and processes of the State program; (2) a description of the organization and structure of the agency or agencies that will have responsibility for administering the program; and (3) a description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.

EPA believes the Washington permitting authorities have taken the necessary steps to provide for adequate resources to support implementation and enforcement of the respective HAP programs which are at least as stringent as the 40 CFR 63.91(b)(3) requirements. The recently adopted regulations cited in section III.B. provide the regulatory framework for administering the respective HAP programs. The stringency requirement of 40 CFR 63.91(b)(1) is met because the relevant Washington state and local regulations adopt by reference all the 40 CFR Part 61 and Part 63 NESHAP regulations being requested for delegation. Therefore, if approved, the Washington permitting authorities' air toxics programs would cover the same sources and the same pollutants which are presently being covered under the federal Part 61 NESHAP regulations.

Further, on November 9, 1994, EPA granted interim approval to the Washington permitting authorities operating permit programs, where EPA found that Washington substantially possesses adequate resources to implement and enforce their statewide operating permit program (see 59 FR 42552, August 18, 1994, and 59 FR 55813, November 9, 1994, for further discussion regarding the interim approval of state of Washington Part 70 operating permit programs, which includes discussion of adequate resources).

Program costs for major sources subject to the state-adopted NESHAP regulation would be funded through four separate fee programs: annual operating permit fees; new source review fees; source registration fees; and RACT determination fees. EPA believes that these four program fee collection mechanisms will be adequate to cover the costs of implementing and enforcing the federal NESHAP regulations proposed for delegation. The EPA plans to continually monitor the implementation of the respective HAP programs for each of the Washington permitting authorities to ensure that adequate resources are in fact available.

D. Demonstration of Expeditious Implementation of 40 CFR Part 61 Requirements

40 CFR 63.91(b)(4) requires the state or local authority to demonstrate that they can expeditiously implement each delegated NESHAP regulation or program upon approval. EPA believes that the Washington permitting authorities' statutory and regulatory authorities are more than adequate to expeditiously implement these 40 CFR Parts 61 and 63 regulations which they have adopted into state and local law to date. RCW 70.94 provides the

Washington permitting authorities with the broad legal authority to implement and enforce all federal NESHAP regulations adopted into state or local law or included in a state or locally-issued operating permit issued pursuant to WAC 173–401. The Washington permitting authorities would adopt, implement and enforce all new and amended NESHAP regulations through their respective HAP programs. Operating permits will be issued to all major NESHAP sources, where each permit will contain all federal, state, and local air pollution control requirements applicable to that source, including all NESHAP requirements. By law, the Washington permitting authorities are to have issued operating permits to all existing major sources by December 9, 1997, three years from the date of EPA approval of the WAC 173–401 operating permit program. New major sources will be issued an operating permit at startup.

E. Demonstration of Expeditious Compliance by Sources Subject to 40 CFR Part 61 Requirements

The EPA believes that the HAP program regulations for each of the Washington permitting authorities provide for an expeditious schedule for assuring that sources are in compliance with the NESHAP regulations as required by 40 CFR 63.91(b)(5). The Washington permitting authorities have demonstrated to EPA that they indeed have the resources and authority to assure compliance for all major sources covered under WAC 173–400 and WAC 173–401 (or equivalent local regulation), which includes those sources that are subject to the federal NESHAP regulations. Nothing in Washington state or local regulations would allow a source to avoid or delay compliance with any CAA requirement beyond the date required by the federal NESHAP regulations.

The framework for the Washington permitting authorities compliance and enforcement programs are outlined in the State/EPA ''Compliance Assurance Agreement'' (included in Washington's Title V program submittal). The Washington permitting authorities' compliance programs will be run through the WAC 173–401 operating permit program (or equivalent local program), in which sources are required by federal, state, and local law to comply with all conditions and requirements of the operating permit upon issuance.

IV. Programs for Proposed Approval and Disapproval

A. 40 CFR Part 61 and Part 63 NESHAP Regulations

With this notice EPA proposes to grant interim approval to the state of Washington Department of Ecology's January 5, 1995, request for delegated authority to implement and enforce 40 CFR Part 61, subparts A, C through F, J, L through P, V, Y, BB, and FF, as adopted into WAC 173–400, NWAPA Section 104.2, PSAPCA Regulation III Section 2.02, SWAPCA 400 Section 075, and YCCAA Regulation I Section 12.02, as these rules apply to Part 70 sources (i.e., those major sources which will be issued a Title V operating permit). EPA is also proposing to grant interim approval to the NWAPA, PSAPCA, and SWAPCA request for delegated authority to implement and enforce the locally-adopted 40 CFR Part 63 NESHAP regulation as these rules apply to Part 70 sources only (NWAPA regulation 104.2 which adopts by reference 40 CFR Part 63 subparts A through D, F through I, L, M, and Q, as amended on October 19, 1994; PSAPCA Regulation III, Section 2.02 as in effect on October 19, 1995, which adopts by reference all 40 CFR Part 63 NESHAP regulations in effect as of July 1, 1995; and, SWAPCA regulation 400–075 as in effect on February 1, 1995, which adopts by reference 40 CFR Part 63 subparts A, B, D, F–I, L–O, R, Q, T, and EE).

It is EPA's belief that the Washington permitting authorities' request for delegation substantially meets the requirements of 40 CFR 63.91. However, since EPA has determined that Washington's criminal authorities under RCW 70.94.430 do not meet the stringency requirement of 40 CFR 70.11, EPA is therefore only proposing to grant interim approval to the Washington permitting authorities' request for delegated authority. This interim delegation of authority would apply to all of the state-adopted NESHAP regulations being requested for delegation by the Washington permitting authorities, but only as these regulations apply to Part 70 sources. EPA will retain implementation and enforcement authority for these rules as they apply to non-Part 70 sources during the interim period until such time as the Washington permitting authorities demonstrate that their criminal authorities meet EPA requirements.

Interim delegation has been deemed by EPA to be an acceptable delegation option for states who substantially, but do not fully meet the stringency requirements of 40 CFR 63.91 (see December 10, 1993, John Seitz memo ''Straight Delegation Issues Concerning Sections 111 and 112 Requirements and Title V''). In this respect EPA is allowing the Washington permitting authorities the opportunity to amend their state regulations within a specified timeframe while at the same time delegating federal authority to allow them to implement and enforce the federal NESHAP regulations as adopted into state law.

Finally, this delegation of authority to implement and enforce the federal NESHAP regulations would only extend until December 9, 1996, which coincides with the end of the interim delegation period for the Washington permitting authorities Part 70 operating permit program. EPA will not extend this interim delegation past December 9, 1996.

B. Voluntary Limits on HAP Emissions

EPA is also proposing to approve WAC 173–400–091, 110, 112, 113, and 114; NWAPA sections 300 through 303; OAPCA Regulation 1, Article 7; PSAPCA Regulation I, Article 6, and Regulation III, Appendix A; SCAPCA Regulation I, Article II and V; SWAPCA 400–090, –110, –112, –113, and –114; and, YCCAA Restated Regulation I, Sections 4.02 and 12.01, under the authority of section 112(l) of the Act in order to recognize these regulations as federally-enforceable for purposes of establishing PTE limitations. Approval of these regulations would provide the Washington permitting authorities the ability to create federally-enforceable emission limits by order for those sources which have the potential to emit HAPs above major threshold levels but have actual HAP emissions which are below major source levels (thereby becoming a ''synthetic area source'').

The EPA plans to codify the approval criteria for synthetic area source programs through amendments to subpart E of 40 CFR Part 63, the regulations promulgated to implement section 112(l) of the Act. The EPA believes it has authority under section 112(l) to approve programs which limit potential to emit HAP prior to this revision to subpart E. The EPA is proposing approval of the Washington permitting authorities' synthetic area source program regulations now so that they may begin to issue federally-enforceable permits as soon as possible. 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 their potential to emit HAP.

EPA, as well, believes that the five approval criteria for approving state operating permit programs into the SIP, as specified in the June 28, 1989 Federal Register notice, are also appropriate for evaluating and approving state synthetic area source programs under section 112(l) of the Act. 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. The EPA currently anticipates that the regulatory criteria to be set forth in the revisions to 40 CFR part 63, subpart E rule, as they apply to state synthetic area source permit programs, will mirror those set forth in the June 28, 1989 Federal Register notice.

Therefore, EPA proposes to approve the Washington permitting authorities' state and locally-adopted PTE regulations under the authority of section 112(l) of the Act. Furthermore, EPA proposes that after final approval of this section, synthetic area source permits issued pursuant to these regulations (including terms and conditions for HAPs contained therein) would be enforceable by EPA and by citizens under section 304 of the Act regardless of whether such permits were issued prior to EPA approval of these regulations. However, such permits would have to have been issued after the effective date of the applicable state or local regulation and in accordance with the provisions set forth within such regulation. Additionally, the EPA believes that since state new source review permit 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 also not be necessary.

C. Requirements for ''Full'' Approval

It is EPA's position that the state of Washington criminal enforcement authorities do not meet the requirements of 40 CFR 63.91(b)(1) and (b)(6). In order for the Washington permitting authorities to receive full delegation of authority for the NESHAP regulations requested they need to demonstrate to EPA that their criminal enforcement authorities are consistent with the enforcement requirements of 40 CFR 70.11(a), and therefore 40 CFR 63.91(b)(1) and (b)(6). Specifically the state of Washington will need to:

(1) Revise RCW 70.94.430 to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii),

(2) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation, and

(3) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation, or

(4) Demonstrate to the satisfaction of EPA that these authorities are consistent with 40 CFR 70.11, and therefore 40 CFR 61.91.

Though EPA is proposing interim delegation of authority to enforce the NESHAP regulations to the Washington permitting authorities, it is important to note that EPA retains oversight authority for sources subject to these federal CAA requirements. EPA has the authority and responsibility to enforce the federal regulations in those situations where the State or Local does not have sufficient authority to file criminal charges against a facility. Therefore, even though EPA believes that the Washington permitting authorities' criminal authorities are not fully adequate, EPA believes that Ecology and the seven local air authorities, in conjunction with EPA, can provide for adequate enforcement of the federal NESHAP regulations.

D. Typographical Error

EPA has noted an error in a cross-reference to a regulation in support of the Washington permitting authorities' request for approval of their PTE regulations. EPA is assuming that the reference in WAC 173–400–171(i) to WAC 173–400–090 meant to reference WAC 173–400–091.

V. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposed interim approval. Copies of the state of Washington submittal and other information relied upon for this action are contained in a docket maintained at the EPA Regional Office. The docket is a file of information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. 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 rulemaking process, and (2) to serve as the record in case of judicial review. The EPA will consider any comments received by March 18, 1996.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

NESHAP rule or program delegations approved under the authority of section 112(l) of the Act do not create any new requirements, but simply confer federal authority for those requirements that the state of Washington is already imposing. Therefore, because section 112 delegation approvals do not impose any new requirements, I certify that it would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning State programs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct 1976); 42 U.S.C. 7410(a)(2).

If EPA's final action is a disapproval, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the state of Washington submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that any final disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing State requirements nor does it substitute a new federal requirement.

D. Unfunded Mandates Reform Act

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 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.

VI. Summary of Action

Pursuant to the authority of section 112(l) of the Act EPA is soliciting public comment on today's proposal to delegate in the interim the authority to implement and enforce specific federal NESHAP regulations which have been adopted into Washington state law. Additionally, EPA is proposing to approve specific state and local air regulations for the purpose of conferring federal enforceability to PTE permits or orders issued pursuant to these regulations.

Interested parties are invited to comment on all aspects of this proposed rule. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by March 18, 1996, will be considered in the final rulemaking action taken by EPA. Issues raised by those comments will be carefully reviewed and considered in the decision to approve or disapprove the submittal. The EPA expects to make a final decision on whether or not to approve the Washington submittal within 30 days after the close of the public comment period. EPA will give notice of this decision in a final Federal Register rulemaking. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 6, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–3584 Filed 2–15–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[WT Docket No. 96–6; FCC 96–17]

Flexible Service Offerings in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rule Making (''Notice''), we propose that broadband Commercial Mobile Radio Service (''CMRS'') (''broadband CMRS'') providers be authorized to offer fixed wireless local loop service. We also solicit comment on whether other or all fixed services should be permitted in addition to the mobile and related fixed services now permitted. We initiate this proceeding on our own motion to address the uncertainty in our existing rules on the extent to which fixed services may be provided by broadband Personal Communications Service (''PCS''), Cellular Radiotelephone Service (''cellular''), and Special Mobile Radio (''SMR'') providers. The measures we propose should increase competition within wireless services and promote competition between wireless and wireline services.

DATES: Comments are to be filed on or before February 26, 1996. Reply Comments are to be filed on or before March 18, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Danner, Legal Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620.

SUPPLEMENTARY INFORMATION:

This *Notice of Proposed Rule Making* in WT Docket No. 96–6, adopted January 24, 1996, and released January 25, 1996, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.E., Suite 1400, Washington, D.C. 20037 (telephone (202) 857–3800).

I. Introduction

1. In this *Notice of Proposed Rule Making* (''Notice'') in WT Docket No. 96–6, we propose that broadband Commercial Mobile Radio Service (''CMRS'') (''broadband CMRS'')[1] providers be authorized to offer fixed wireless local loop service. We also solicit comment on whether other or all fixed services should be permitted in addition to the mobile and related fixed services now permitted. We initiate this proceeding on our own motion to address the uncertainty in our existing rules on the extent to which fixed services may be provided by broadband Personal Communications Service (''PCS''), Cellular Radiotelephone Service (''cellular''), and Special Mobile Radio (''SMR'') providers. The measures we propose should increase competition within wireless services and promote competition between wireless and wireline services.

II. Background

2. The Communications Act[2] defines ''mobile service'' as a ''radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and includes (1) both one-way and two-way radio communication services, (2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled 'Amendment to the Commission's Rules to Establish New Personal Communications Services' (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding.'' 47 U.S.C. 153(n).

3. In the *Second Report and Order* in GN Docket No. 93–252, 59 FR 18493 (April 19, 1994) (''*CMRS Second Report & Order*''), the Commission interpreted the statutory definition of mobile service to include ''all auxiliary services provided by mobile services licensees,'' but then distinguished between fixed point-to-point services and those services capable of being provided in a ''mobile mode.'' The *CMRS Second Report and Order* excludes from the mobile definition those services which are solely fixed in nature (*e.g.*, Basic Exchange Telephone Radio Service (BETRS)), but categorizes other services that have some fixed uses as mobile by virtue of having a mobile component or mobile capabilities. For example, we determined that services provided through dual-use equipment, such as Inmarsat-M terminals that can be moved while transmitting, are mobile.

4. Our current rules for broadband CMRS services allow licensees to provide all forms of mobile services, including local loop services that are mobile in nature. In addition, broadband CMRS providers may

[1] The services under ''broadband CMRS'' includes Broadband Personal Communications Service, Cellular Radiotelephone Service and Specialized Mobile Radio. *See in the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,* GN Docket No. 93–252, 59 FR 59945 (November 12 1994), *Third Report and Order,* 9 FCC Rcd 7988, 8105–8110, ¶¶ 252–265 (1994).

[2] Communications Act of 1934, as amended, 47 U.S.C. 332 (''Communications Act'').