

§ 51.360 Waivers and compliance via diagnostic inspection.

The program may allow the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards, as long as the prescribed criteria described below are met.

(a) * * *

(1) Waivers shall be issued only after a vehicle has failed a retest performed after all qualifying repairs have been completed. Qualifying repairs include repairs of primary emission control components performed within 60 days of the test date.

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(5) General repairs shall be performed by a recognized repair technician (i.e., one professionally engaged in vehicle repair, employed by a going concern whose purpose is vehicle repair, or possessing nationally recognized certification for emission-related diagnosis and repair) in order to qualify for a waiver. I/M programs may allow repairs of primary emission control components performed by non-technicians (e.g., owners) to apply toward the waiver limit.

(6) In basic programs, a minimum of \$75 for pre-81 vehicles and \$200 for 1981 and newer vehicles shall be spent in order to qualify for a waiver. These model year cutoffs and the associated dollar limits must be in full effect no later than January 1, 1998. Prior to January 1, 1998, states may adopt any minimum expenditure commensurate with the waiver rate committed to for the purposes of modeling compliance with the basic I/M performance standard.

(7) Beginning on January 1, 1998, enhanced I/M programs shall require the motorist to make an expenditure of at least \$450 in repairs to qualify for a waiver. The I/M program shall provide that the \$450 minimum expenditure shall be adjusted in January of each year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index of 1989. Prior to January 1, 1998, states may adopt any minimum expenditure commensurate with the waiver rate committed to for the purposes of modeling compliance with the relevant enhanced I/M performance standard.

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(ii) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used. The first Consumer Price Index adjustment to the minimum \$450 waiver

expenditure shall go into effect on January 1, 1998.

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(9) A time extension, not to exceed the period of the inspection frequency, may be granted to obtain needed repairs on a vehicle in the case of economic hardship when waiver requirements have not been met. After having received a time extension, a vehicle must fully pass the applicable test standards before becoming eligible for another time extension. The extension for a vehicle shall be tracked and reported by the program.

(b) *Compliance via diagnostic inspection.* Vehicles subject to a transient IM240 emission test at the cutpoints established in §§ 51.351 (f)(7) and (g)(7) of this subpart may be issued a certificate of compliance without meeting the prescribed emission cutpoints, if, after failing a retest on emissions, a complete, documented physical and functional diagnosis and inspection performed by the I/M agency or a contractor to the I/M agency show that no additional emission-related repairs are needed. Any such exemption policy and procedures shall be subject to approval by the Administrator.

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4. Section 51.372 is amended by revising paragraph (c) introductory text, (c)(3) and (c)(4), and paragraph (e) to read as follows:

§ 51.372. State implementation plan submissions.

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(c) *Redesignation requests.* Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a State Implementation Plan (SIP) submittal under Sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements:

* * * * *

(3) A contingency measure consisting of a commitment by the Governor or the Governor's designee to adopt or consider adopting regulations to implement an I/M program to correct a violation of the ozone or CO standard or other air quality problem, in accordance with the provisions of the maintenance plan.

(4) A commitment that includes an enforceable schedule for adoption and implementation of the I/M program, and appropriate milestones. The schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart. Schedule milestones shall be listed in months from the date EPA notifies the state that it is in violation

of the ozone or CO standard or any earlier date specified in the state plan. Unless the state, in accordance with the provisions of the maintenance plan, chooses not to implement I/M, it must submit a SIP revision containing an I/M program no more than 18 months after notification by EPA.

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(e) *SIP submittals to correct violations.* SIP submissions required pursuant to a violation of the ambient ozone or CO standard (as discussed in § 51.372(c)) shall address all of the requirements of this subpart. The SIP shall demonstrate that performance standards in either § 51.351 or § 51.352 shall be met using an evaluation date (rounded to the nearest January for carbon monoxide and July for hydrocarbons) seven years after the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. Emission standards for vehicles subject to an IM240 test may be phased in during the program but full standards must be in effect for at least one complete test cycle before the end of the 5-year period. All other requirements shall take effect in within 24 months of the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. The phase-in allowances of § 51.373(c) of this subpart shall not apply.

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40 CFR Part 70

[ND-001; FRL-5199-8]

Clean Air Act Proposed Interim Approval, or in the Alternative Proposed Disapproval, of Operating Permits Program; State of North Dakota

AGENCY: Environmental protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the State of North Dakota 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. In the alternative, EPA proposes disapproval of the North Dakota Operating Permits Program if the corrective action necessary for final interim PROGRAM approval is not

completed and submitted to EPA prior to the statutory deadline.

DATES: Comments on this proposed action must be received in writing by May 30, 1995.

ADDRESSES: Comments should be addressed to Laura Farris at the Region 8 address. Copies of the State's submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, U.S. Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294-7539.

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 (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 would extend for

two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for 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 the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if the State failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until EPA determined that the State had corrected the deficiency by submitting a complete corrective program.

If, following final interim approval, EPA were to disapprove the State's complete corrective program, EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a state 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 that state upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of North Dakota submitted an administratively complete title V Operating Permit Program (PROGRAM) for the State of North Dakota on April 28, 1994. EPA deemed the PROGRAM administratively

complete in a letter to the Governor dated June 28, 1994. The PROGRAM submittal includes a legal opinion from the Attorney General of North Dakota stating that the laws of the State provide adequate legal authority to carry out all aspects of the PROGRAM, and a description of how the State intends to implement 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 North Dakota PROGRAM, including the operating permit regulation (Article 33-15, Section 33-15-14-06, of the North Dakota Administrative Code—Air Pollution Control Rules (NDAC)), substantially meets the requirements of 40 CFR parts 70.2 and 70.3 with respect to applicability; parts 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; part 70.5 with respect to complete application forms and criteria which define insignificant activities; part 70.7 with respect to public participation and minor permit modifications; and part 70.11 with respect to requirements for enforcement authority.

Sub-section 33-15-14-06.4.c of the NDAC defines the emissions units or activities that sources do not have to include in their operating permit application (insignificant activities). This definition includes an emission threshold of 5 tons per year (tpy) for particulates, 10 tpy for sulfur dioxide, 2.5 tpy for hydrogen sulfide, 25 tpy for carbon monoxide, 10 tpy for nitrogen oxides, 10 tpy for ozone, 2.5 tpy for reduced sulfur compounds and 10 tpy for volatile organic compounds (see PROGRAM deficiencies below). This provision also states that the applicant may not omit information needed to determine applicable requirements or to evaluate the fee amount required. These emission thresholds do not apply to hazardous air pollutants (HAPs) listed in section 112(b) of the Act. However, in a letter from the State to EPA dated October 18, 1994, the State discussed several proposed changes to their PROGRAM submittal. One of the proposed changes would establish an insignificant activities emission threshold of 0.5 tpy for HAPs, which is an acceptable level.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B)

of the Federal permitting regulation requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. 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 that this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A) of the Federal permitting regulation. 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. Sub-section 33-15-14-06.5.a(3)(c)[2] of the NDAC states that "prompt" will be defined in the permit consistent with chapter 33-15-01 of the NDAC, "General Provisions", and the applicable requirements.

North Dakota has the authority to issue a variance from air pollution control requirements imposed by State law (See North Dakota Century Code 23-25-03.11 and North Dakota Administrative Code 33-15-01-07.) The EPA regards these 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, such as the variance provisions referred to, which 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. The EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

Comments noting deficiencies in the North Dakota PROGRAM were sent to the State in a letter dated December 22, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval,

and those that require corrective action prior to full PROGRAM approval. In a letter dated January 5, 1995, the State committed to finalize and submit to EPA by February 15, 1995 all corrective actions required for interim PROGRAM approval. The State submitted these corrective actions in letters dated February 22, 1995, and March 20, 1995. EPA has reviewed these corrective actions and has determined them to be adequate to allow for interim PROGRAM approval with the following exception: Section IX of the PROGRAM submittal (Implementation of other Titles of the Act), part B.4 (Implementation Schedule) does not address case-by-case MACT under section 112(j) of the Act. The PROGRAM should require permit applications from sources subject to section 112(j) of the Act within 18 months after EPA fails to promulgate a MACT standard. Prior to final interim PROGRAM approval, the State must address how it will implement section 112(j) of the Act. The State's February 22, 1995 letter stated that it is currently in the process of adopting rules for implementation of section 112(j) of the Act which were promulgated under 40 CFR part 63, subpart B. These rules, which are being adopted by reference, are expected to be finalized by June, 1995. EPA must receive the final, adopted copy of these rules and determine them to be adequate before proceeding with final interim PROGRAM approval.

Areas in which the North Dakota PROGRAM is deficient and requires corrective action prior to full PROGRAM approval are as follows: (1) EPA believes that the insignificant emission levels listed in sub-section 33-15-14-06.4.c of the NDAC for various air contaminants are too high (emission levels are set at approximately 25% of the PSD major modification significant levels). It is possible that the total emissions from such "insignificant" emissions units may indeed be greater than the major modification significance levels or even greater than the major source threshold. EPA has issued informal guidance stating that a State's emissions caps for defining insignificant activities should generally be no more than 1-2 tons per year for criteria pollutants. Prior to full PROGRAM approval, the State must revise sub-section 33-15-14-06.4.c of the NDAC to lower the insignificant emissions unit threshold for criteria pollutants to more reasonable levels. (2) Sub-section 33-15-14-06.5.a.(1)(c) of the NDAC states, "Where the state implementation plan [SIP] or this article allows a

determination of an alternative emission limit at a title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process * * *." In order to implement this provision, the State must adopt specific provisions which detail how to determine that an alternative mission limit is equivalent to that in the SIP, and EPA must approve the provisions as part of the SIP. Until this can be accomplished, and prior to full PROGRAM approval, the State must delete the words "or this article" from the first line of sub-section 33-15-14-06.5.a.(1)(c) of the NDAC. (3) Sub-section 33-15-14-06.5.a.(11) of the NDAC does not include the requirements of 40 CFR 70.4(b)(12). Specifically, prior to full PROGRAM approval, sub-section 33-15-14-06.5.a.(11) of the NDAC must be revised to state that changes in emissions are allowed by this sub-section provided that they are not modifications under title I of the Act and the changes do not exceed the emissions allowed under the permit. (4) Sub-section 33-15-14-06.5.f.(1) of the NDAC states that " * * * as of the date of permit issuance, the source is considered to be in compliance with any applicable requirements * * *." EPA's permit shield provision in 40 CFR 70.6(f) requires such considerations to be dependent on compliance with the conditions of the permit. Thus, prior to full PROGRAM approval, the State must revise sub-section 33-15-14-06.5.f.(1) of the NDAC to read " * * * the department shall include in a title V permit to operate a provision stating *that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance* * * *." (5) Sub-section 33-15-14-06.5.a.(8) of the NDAC states that, "No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit and the state implementation plan or this article." Sub-sections 33-15-14-06.5.a.(10) and 33-15-14-06.6.e.(1)(a)[2] of the NDAC are related. Currently, the State does not have an economic incentives, marketable permits or generic emissions trading program approved in its SIP, and these provisions cannot be implemented by the State. Prior to full PROGRAM approval, the State must delete "or this article" from sub-section 33-15-14-06.5.a.(8) of the NDAC, and "this article" from sub-sections 33-15-14-06.5.a.(10)

and 33-15-14-06.6.e.(1)(a)[2] of the NDAC to clarify that, in order to implement these provisions, the State must have an economic incentives, marketable permits or generic emissions trading program approved in its SIP. (6) Section IV of the PROGRAM submittal (Attorney General's Legal Opinion), part XX (Limitations on Judicial Review), does not cite to relevant State laws or regulations or to State case law, and, instead of discussing the provisions of North Dakota laws, largely discusses Federal regulations. The opinion should discuss and reference North Dakota law which ensures that the provisions for judicial review in North Dakota Century Code (N.D.C.C.) Chapter 28-23-14 and 15 and in NDAC Article 33-22 are the exclusive means for obtaining judicial review of the terms and conditions of permits and that petitions for judicial review must be filed within the 90-day periods discussed in 40 CFR 70.4(b)(3)(xii). Prior to full PROGRAM approval, the State must augment the Attorney General's opinion, providing discussion of and citation to case law, statutes, and regulations which address the requirements of 40 CFR 70.4(b)(3)(xii), or, if such an opinion cannot be rendered, the State must change its statutes and/or regulations to ensure that the requirements of 40 CFR 70.4(b)(3)(xii) are met. (7) Section IV of the PROGRAM submittal (Attorney General's Legal Opinion), part XVII (Final Agency Action on Permits), indicates that under State law, "final permit action" includes the failure of the State to take final action on an application for a permit, permit renewal, or permit revision within the time specified in the regulations. It also indicates that the State's failure to take final action within 90 days of receipt of an application for a minor permit modification (or 180 days for minor modifications subject to group processing) is subject to judicial review. For support of these assertions, the opinion cites to N.D.C.C. 28-32 and NDAC Article 33-22. EPA could not determine whether these provisions support a right to judicial review in cases where the State fails to act in a timely way on a permit application. Prior to full PROGRAM approval, the State must augment the Attorney General's opinion, providing discussion of and citation to case law and/or specific statutory or regulatory provisions which provide for judicial review in cases of State inaction, consistent with the requirements of 40 CFR 70.4(b)(3)(xi), or if such an opinion cannot be rendered, the State must change its statutes and/or regulations to

ensure that the requirements of 40 CFR 70.4(b)(3)(xi) are met. (8) Section IV of the PROGRAM submittal (Attorney General's Legal Opinion), part XIV (Enforcement of Permits Program Requirements), states that State law provides civil and criminal enforcement authority consistent with 40 CFR 70.11. EPA was unable to determine from the opinion whether North Dakota's PROGRAM is consistent in all respects with 40 CFR 70.11, and in particular with the requirement for maximum fines of not less than \$10,000 per day per violation. Prior to full PROGRAM approval, the State must augment the Attorney General's opinion, providing citation to and discussion of case law indicating that the PROGRAM meets the penalty requirements contained in 40 CFR 70.11, or, if such an opinion cannot be rendered, the State must change its statutes and/or regulations to ensure that the requirements of 40 CFR 70.11 are met.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of each comment and the corrective actions required of the State.

3. Fee Adequacy Demonstration

The North Dakota PROGRAM includes a fee structure that collects in the aggregate fees that are below the presumptive minimum set in part 70. Therefore, it was necessary for the State to include a fee adequacy demonstration in their PROGRAM submittal to demonstrate that the State's title V fee structure would collect sufficient fees to cover the reasonable direct and indirect costs of developing and administering the PROGRAM. The fee adequacy demonstration included a four year workload analysis and a cash flow analysis. The fee structure for fiscal year 1995 includes a fee of \$10 per ton with a cap of \$100,000 per source. These fees are projected to increase to \$14.42 per ton with a cap of \$109,000 per source by fiscal year 1998. After careful review, the State has determined that these fees would support the North Dakota PROGRAM costs as required by section 70.9(a) of the Federal operating permitting regulation.

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

a. Authority and/or Commitments for Section 112 Implementation

North Dakota has demonstrated in its PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in North Dakota's enabling

legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow North Dakota to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities, with the exception noted in section II.A.2 above. Therefore, contingent upon the State completing the above noted corrective action, EPA will consider that the State of North Dakota'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. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of 112(g)

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), North Dakota 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 North Dakota can utilize its construction review program to serve as a procedural vehicle for implementing section 112(g) 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 proposing to approve North Dakota's construction permitting program found in section 33-15-14-02 of the State's regulations under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period to meet the requirements of section 112(g). 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 proposes to limit the duration of the approval to 12 months following promulgation by EPA of its section 112(g) rule. North Dakota's construction permitting program allows permit requirements to be established for all air contaminants (which is defined in section 33-15-01-04 of the NDAC and includes all of the hazardous air pollutants (HAPs) listed in section 112(b) of the Act).

c. Program for Straight Delegation of Section 112 Standards

Requirements for approval, specified in 40 CFR § 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of the provisions of 40 CFR part 63, Subpart A, and section 112 standards promulgated by EPA as they apply to part 70 sources, as well as non-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. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. North Dakota has informed EPA that it intends to accept delegation of section 112 standards through incorporation by reference. This program applies to both existing and future standards.

The radionuclide national emission standard for HAPs (NESHAP) is a section 112 regulation and an applicable requirement under the State PROGRAM. Currently the State of North Dakota has no part 70 sources which emit radionuclides. However, sources which are not currently part 70 sources may be defined as major and become part 70 sources under forthcoming Federal radionuclide regulations. In that event, the State will be responsible for issuing part 70 permits to those sources.

d. Program for Implementing Title IV of the Act

North Dakota's PROGRAM contains adequate authority to issue permits which reflect the requirements of title IV of the Act, and commits to adopt the rules and requirements promulgated by

EPA to implement an acid rain program through the title V permit.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by the State of North Dakota on April 28, 1994. If promulgated, the State must complete the following corrective action, as discussed above, to receive final interim PROGRAM approval: Adopt rules for implementation of section 112(j) of the Act which were promulgated under 40 CFR part 63, subpart B.

The State must complete the following corrective actions, as discussed above, to receive full PROGRAM approval: (1) The State must revise sub-section 33-15-14-06.4.c of the NDAC to lower the insignificant emissions unit threshold for criteria pollutants to more reasonable levels. (2) In order to implement sub-section 33-15-14-06.5.a.(1)(c) of the NDAC, the State must adopt specific provisions which detail how to determine that an alternative emission limit is equivalent to that in the SIP, and EPA must approve the provisions as part of the SIP. Until this can be accomplished, the State must delete the words "or this article" from the first line of sub-section 33-15-14-06.5.a.(1)(c) of the NDAC. (3) Sub-section 33-15-14-06.5.a.(11) of the NDAC must be revised to state that changes in emissions are allowed by this sub-section provided that they are not modifications under title I of the Act and the changes do not exceed the emissions allowed under the permit. (4) The State must revise sub-section 33-15-14-06.5.f.(1) of the NDAC to read "* * * the department shall include in a title V permit to operate a provision stating *that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance* * * *." (5) The State must delete "or this article" from sub-section 33-15-14-06.5.a.(8) of the NDAC, and "this article" from sub-sections 33-15-14-06.5.a.(10) and 33-15-14-06.6.e.(1)(a)[2] of the NDAC to clarify that, in order to implement these provisions, the State must have an economic incentives, marketable permits or generic emissions trading program approved in its SIP. (6) The State must augment the Attorney General's opinion, providing discussion of and citation to case law, statutes, and regulations which address the requirements of 40 CFR 70.4(b)(3)(xii), or, if such an opinion cannot be rendered, the State must change its statutes and/or regulations to ensure

that the requirements of 40 CFR 70.4(b)(3)(xii) are met. (7) The State must augment the Attorney General's opinion, providing discussion of and citation to case law and/or specific statutory or regulatory provisions which provide for judicial review in cases of State inaction, consistent with the requirements of 40 CFR 70.4(b)(3)(xi), or, if such an opinion cannot be rendered, the State must change its statutes and/or regulations to ensure that the requirements of 40 CFR 70.4(b)(3)(xi) are met. (8) The State must augment the Attorney General's opinion, providing citation to and discussion of case law indicating that the PROGRAM meets the penalty requirements contained in 40 CFR 70.11, or, if such an opinion cannot be rendered, the State must change its statutes and/or regulations to ensure that the requirements of 40 CFR 70.11 are met.

Evidence of these corrective actions for full PROGRAM approval must be submitted to EPA within 18 months of EPA's interim approval of the North Dakota PROGRAM.

The scope of North Dakota's part 70 PROGRAM that EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the PROGRAM) within the State, except the following: any sources of air pollution located in "Indian Country," as defined in 18 U.S.C. 1151, including the Fort Berthold, Fort Totten, Standing Rock, Sisseton and Turtle Mountain Indian Reservations, or any other sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-18 (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 43955, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

In proposing not to extend the scope of North Dakota's part 70 PROGRAM to sources located in "Indian Country," EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over such sources. Should the State of North Dakota choose to seek program approval within "Indian Country," it may do so without prejudice. Before EPA would approve the State's part 70 PROGRAM for any portion of "Indian Country," EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or

applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval, that such approval would constitute sound administrative practice, and that those sources are not subject to the jurisdiction of any Indian Tribe.

This interim approval, which may not be renewed, extends for a period of up to 2 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.

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. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR part 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 applies to sources covered by the part 70 program, as well as non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

- (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and
- (2) To serve as the record in case of judicial review. The EPA will consider any comments received by May 30, 1995.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's actions under 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.

List of Subjects in 40 CFR Part 70

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

Authority: 42 U.S.C. 7401-76719.

Dated: April 19, 1995.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 95-10504 Filed 4-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 180, 185 and 186

[PP 1F3992, 2F4109, 2F4114, 7F3488, 7F3560, 9F3770, FAP 7H3560 and 7H5543/P615; FRL-4951-9]

RIN 2070-AC18

Pesticide Tolerances for Lambda-Cyhalothrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish time-limited tolerances with an expiration date of November 15, 1997, for residues of the synthetic pyrethroid lambda-cyhalothrin in or on the raw agricultural commodities (RACs) soybeans, wheat, forage, hay, straw, grain dust; sweet corn; sunflower, seeds and forage; sorghum grain and dust; corn (grain field and pop); corn fodder and forage; peanuts; meat, fat, and meat byproducts (mbyp) and eggs of poultry and increase tolerances in milk, fat, meat and mbyp of cattle, goats, hogs, horses and sheep; and in or on the processed food/feed items corn grain flour, sunflower hulls, sunflower oil, and wheat bran. Zeneca Ag Products, Inc., and Coopers Animal Health, Inc., submitted petitions to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) proposing tolerances and regulations to establish maximum permissible levels for residues of the insecticide.

DATES: Comments, identified by the document control numbers, [PP 1F3992, 2F4109, 2F4114, 7F3488, 7F3560, 9F3770, FAP 7H3560 and 7H5543/P615], must be received on or before May 30, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [1F3992, 2F4109, 2F4114, 7F3488, 7F3560, 9F3770, FAP 7H3560 and 7H5543/P615]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.