

Accordingly, part 0, subpart X of title 28 of the Code of Federal Regulations is amended as follows:

**PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE**

1. The authority citation for part 0 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519.

2. Section 0.137 of subpart X is revised to read as follows:

**§ 0.137 Federal Bureau of Investigation and Drug Enforcement Administration.**

Except as to persons in Senior Executive Service positions reporting directly to the Director of the Federal Bureau of Investigation or the Administrator or Deputy Administrator of the Drug Enforcement Administration, the Director of the Federal Bureau of Investigation and the Administrator of the Drug Enforcement Administration are authorized, as to their respective jurisdictions, to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employment, direction and general administration (including appointment, assignment, training, promotion, demotion, compensation, leave, awards, classification and separation) of personnel, including personnel in wage board positions. All personnel actions under this section shall be subject to post-audit and correction by the Assistant Attorney General for Administration.

3. Section 0.138 of Subpart X is revised to read as follows:

**§ 0.138 Bureau of Prisons, Federal Prison Industries, Immigration and Naturalization Service, United States Marshals Service, Executive Office for U.S. Attorneys.**

The Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Director of the U.S. Marshals Service, and the Director of the Executive Office for U.S. Attorneys are, as to their respective jurisdictions, authorized to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employment, direction, and general administration (including appointment, assignment, training, promotion, demotion, compensation, leave, awards, classification, and separation) of personnel in General Schedule grades GS–1 through GS–15 and in wage board positions, but excluding therefrom all attorney and U.S. Marshal positions. Such officials are, as to their respective

jurisdictions, authorized to exercise the power and authority vested in the Attorney General by law to employ on a temporary basis experts or consultants or organizations thereof, including stenographic reporting services (5 U.S.C. 3109(b)). All personnel actions taken under this section shall be subject to post-audit and correction by the Assistant Attorney General for Administration.

4. Section 0.157 of subpart X is amended, by revising the heading and paragraphs (c) and (d) and by adding paragraph (e), to read as follows:

**§ 0.157 Federal Bureau of Investigation—Drug Enforcement Administration Senior Executive Service.**

\* \* \* \* \*

(c) With respect to personnel within the FBI and the DEA who report directly to the Director of the FBI or to the Administrator or Deputy Administrator of the DEA, the Deputy Attorney General is authorized to exercise the authority conferred upon the Attorney General by 5 U.S.C. 3151 and shall ensure that the FBI–DEA SES is designed and administered in compliance with all statutory and regulatory requirements.

(d) With respect to personnel within the FBI and the DEA not covered by paragraph (c) of this section, and consistent with paragraph (b) of this section and § 0.137, the Director of the FBI and the Administrator of the DEA are authorized to exercise for their respective jurisdictions the authority conferred upon the Attorney General by 5 U.S.C. 3151 and shall ensure that the FBI–DEA SES is designed and administered in compliance with all statutory and regulatory requirements.

(e) The Attorney General retains the authority to recommend members of the FBI–DEA SES for Presidential rank awards.

Dated: June 30, 1995.

**Janet Reno,**

*Attorney General.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

[ND–001; FRL–5254–8]

**Clean Air Act Final Interim Approval of Operating Permits Program; State of North Dakota**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final interim approval.

**SUMMARY:** The EPA is promulgating final 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.

**EFFECTIVE DATE:** August 7, 1995.

**ADDRESSES:** Copies of the State's submittal and other supporting information used in developing the final interim approval 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, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

*Introduction*

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (“the Act”)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70) require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one 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 two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On April 28, 1995 EPA published a **Federal Register** notice proposing interim approval of the Operating Permits Program for the State of North Dakota. See 60 FR 20941. EPA received adverse comments on the proposed interim approval, which are addressed below, and is taking final action to promulgate interim approval of the North Dakota PROGRAM.

## II. Final Action and Implications

### A. Analysis of State Submission

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. The North Dakota PROGRAM, including the operating permit regulations (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 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; § 70.5 with respect to complete application forms and criteria which define insignificant activities; § 70.7 with respect to public participation and minor permit modifications; and § 70.11 with respect to requirements for enforcement authority.

EPA's 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. The State committed to address the PROGRAM deficiencies that require corrective action prior to interim PROGRAM approval in a letter dated January 5, 1995. The State submitted these corrective actions in letters dated February 22, March 20, and June 13, 1995. EPA has reviewed these corrective actions and has determined them to be adequate to allow for interim PROGRAM approval.

### B. Response to Comments

The comments received on the April 28, 1995 **Federal Register** notice proposing interim approval of the North Dakota PROGRAM, and EPA's response to those comments, are as follows:

*Comment #1:* One commenter stated that they supported granting interim approval of the State's PROGRAM. However, the commenter also indicated a concern regarding EPA's requirement that the State lower proposed insignificant emission levels, listed in subsection 33-15-14-06.4.c of the NDAC, to "more reasonable" levels prior to full PROGRAM approval. The commenter stated that, because the State's insignificant exemption is based on the emission rate, rather than size or production rate, and the regulation requires listing all emission units claiming the exemption in the permit application, subsection 33-15-14-06.4.c

of the NDAC merely grants the applicant relief from additional administrative burdens imposed on major sources. The commenter urges EPA to reconsider its position when evaluating the PROGRAM for full approval.

*EPA Response:* EPA does not consider this an adverse comment for granting interim approval of the State's PROGRAM. However, for full PROGRAM approval, EPA continues to believe that the insignificant emission levels that North Dakota set for the listed air contaminants (emission levels set at approximately 25% of the Prevention of Significant Deterioration (PSD) major modification significant levels) are too high to be considered reasonable levels for exempting those emission units from Title V operating permit requirements. A determination of what level of emissions is appropriate for these types of exemptions is best performed based on a consideration of the size of the emissions thresholds relative to the major source threshold applicable in various areas of North Dakota. Emissions of 25% of the PSD major modification significance levels are not clearly insignificant. Also, EPA is concerned that a source could have numerous emission units that emit less than the levels the State has set as insignificant and would subsequently be excluded from the majority of Title V permit requirements, even though the total emissions from all such insignificant emission units may be greater than the major modification significance levels or even greater than the major source threshold. Consequently, EPA continues to believe that the State must lower its insignificant emission levels for non-HAP units to a more reasonable level.

*Comment #2:* One commenter stated that the North Dakota PROGRAM jurisdiction should be consistent with existing treaties, court decisions, applicable statutes, and Indian and non-Indian historical activity which may have a bearing on jurisdiction. The commenter referenced specific U.S. Supreme Court cases and indicated belief that State-tribal jurisdictional questions should be decided in federal court and not by EPA "whose expertise is environmental and not jurisdictional."

*EPA Response:* Under Title V of the Act and the part 70 implementing regulations, it is incumbent upon EPA to determine whether a given State has the authority to implement a part 70 operating permits program for affected sources before granting approval of the State's PROGRAM. Specifically, the Act gives EPA regulatory authority "to establish the minimum elements of a

permit program to be administered by any air pollution control agency." See § 502(b) of the Act. The Act further provides that these minimum elements must include "[a] requirement that the permitting authority have adequate authority to \* \* \* issue permits and assure compliance by all sources required to have a permit under [Title V] with each applicable standard, regulation or requirement under [the Act]." See section 502(b)(5) of the Act; 40 CFR 70.4(b)(3)(i).

Because EPA has the responsibility to ensure that a State has adequate authority over sources affected by its Title V program, EPA must make judgments about the scope of a State's legal authority, including its jurisdictional reach over affected sources. EPA also has the responsibility to address whether Tribes may administer Clean Air Act programs and, if not, to establish other means by which EPA will directly administer such programs. See sections 301(d) and 110(o) of the Act; 59 FR 43956 (August 25, 1994).

North Dakota has not specifically asserted jurisdiction over air pollution sources located within Indian Country in either its PROGRAM submittal or its comments on EPA's proposed interim approval. The Program Description that the State submitted to EPA as part of its PROGRAM specifically indicated that the State was not seeking approval to operate the PROGRAM on Indian Reservations. Thus, as EPA indicated in its notice of proposed interim approval, EPA is not presently deciding whether the State of North Dakota has jurisdiction over sources within Indian Country. Should North Dakota choose to seek PROGRAM approval over additional sources located in other areas, it may do so without prejudice. Any EPA decision regarding State or Tribal jurisdiction will necessarily be informed by relevant law, including the applicable provisions of the Act and implementing regulations, and other applicable Federal law.

### C. Final Action

The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of North Dakota on April 28, 1994. The State must complete the following corrective actions to receive full PROGRAM approval: (1) The State must revise subsection 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 Attorney General's opinion, that was part of the PROGRAM submittal, 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). 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 Attorney General's opinion 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. The State must augment the 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.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of these PROGRAM deficiencies and the required corrective actions.

The scope of North Dakota's PROGRAM that EPA is approving 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, 55815-55818 (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 43955, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

In proposing not to extend the scope of North Dakota's 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 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 PROGRAM approval, which may not be renewed, extends until August 7, 1997. During this interim approval period, the State of North Dakota is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State of North Dakota. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the three year time period for processing the initial permit applications.

If the State of North Dakota fails to submit a complete corrective PROGRAM for full approval by February 7, 1997, EPA will start an 18-month clock for mandatory sanctions. If the State of North Dakota 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 North Dakota has corrected the deficiency by submitting a complete corrective PROGRAM. Moreover, if the Administrator finds a lack of good faith on the part of the State of North Dakota, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State of North Dakota has come into compliance. In any case, if, six months after application of the first sanction, the State of North Dakota still has not submitted a corrective PROGRAM that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of North Dakota'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 North Dakota has submitted a revised PROGRAM and EPA has determined

that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State of North Dakota, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State of North Dakota has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State of North Dakota has not submitted a revised PROGRAM that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of North Dakota has not timely submitted a complete corrective PROGRAM or EPA has disapproved its submitted corrective PROGRAM. Moreover, if EPA has not granted full approval to the North Dakota PROGRAM by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of North Dakota upon interim approval expiration.

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 and 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, the EPA is promulgating 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 applies to sources covered by the part 70 program, as well as non-part 70 sources.

EPA is also finalizing its approval of 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, discussed in section II.A.4.b. of the notice proposing interim approval of the North Dakota PROGRAM, 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 is limiting 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).

### III. Administrative Requirements

#### A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments received and reviewed by EPA on the proposal, are maintained in a docket 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 final interim approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

#### 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.

Dated: June 26, 1995.

**Jack W. McGraw,**  
*Acting Regional Administrator.*

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding the entry for North Dakota in alphabetical order to read as follows:

#### Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

\* \* \* \* \*

##### North Dakota

(a) North Dakota State Department of Health and Consolidated Laboratories—Environmental Health Section: submitted on May 11, 1994; effective on August 7, 1995; interim approval expires August 7, 1997.

(b) [Reserved].

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### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 92-217; RM-8069; RM-8139]

#### Radio Broadcasting Services; Camden, East Camden and Stamps, AR; Gibsland and Minden, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document reallocates Channel 237A from Camden to East Camden, Arkansas, and modifies the license of Gary D. Terrell for Station KCXY(FM) to specify operation on Channel 237C1, as requested, pursuant to the provisions of Section 1.420(g) and (i) of the Commission's Rules. See 57 FR 45601, October 2, 1992. The allotment of Channel 237C1 to East Camden will provide that community with its first local aural transmission service without depriving Camden of local aural transmission service. Additionally, as requested, to accommodate the East Camden proposal, Channel 282A is substituted for Channel 238A at Stamps, Arkansas, for which an application is pending; also, Channel 239A is substituted for Channel 237A at Minden, Louisiana, and the license of Cook Enterprises, Inc. for Station KASO-FM is modified accordingly. In response to a counterproposal filed on behalf of Bienville Parish Broadcasting (RM-8139), Channel 283A is allotted to Gibsland, Louisiana, as that community's first local aural transmission service. Coordinates used for Channel 237C1 at East Camden are 33-30-14 and 92-48-38; for Channel 282A at Stamps, 33-23-20 and 93-37-