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 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 PROGRÁM.

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