

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