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SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. 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 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.

On September 23, 1994, EPA published a direct final rule in the Federal Register promulgating interim approval of the Operating Permits Program for the State of Wyoming (PROGRAM). See 59 FR 48802. The EPA received adverse comments on the direct final rule, which are summarized and addressed below. As stated in the Federal Register notice, if adverse or critical comments were received by October 24, 1994, the effective date would be delayed and timely notice would be published in the Federal Register. Therefore, due to receiving adverse comments within the comment period, EPA withdrew the final rule (59 FR 60561, Nov. 25, 1994), and a proposed rule also published in the Federal Register on September 23, 1994 served as the proposed rule for this action. EPA will not institute a second comment period on this document.

In this rulemaking EPA is taking final action to promulgate interim approval of the Wyoming PROGRAM, and correct a typographical error contained in 59 FR 48802 (see section II.B. below).

II. Final Action and Implications

A. Analysis of State Submission

The Governor of Wyoming submitted an administratively complete title V Operating Permit Program for the State of Wyoming on November 19, 1993. The Wyoming PROGRAM, including the operating permit regulations (Section 30 of the Wyoming Air Quality Standards and Regulations (WAQSR)), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; 40 CFR 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 40 CFR 70.5 with respect to complete application forms and criteria which define insignificant activities; 40 CFR 70.7 with respect to public participation and minor permit modifications; and 40 CFR 70.11 with respect to requirements for enforcement authority.

A letter sent to the State dated May 10, 1994, identified areas in which the Wyoming PROGRAM was deficient and the corrective actions that were to be completed either prior to interim PROGRAM approval or prior to full PROGRAM approval. In a letter dated June 7, 1994, which included an Attorney General's opinion dated June 6, 1994, the State addressed all EPA issues that would have prevented EPA from issuing interim approval of the Wyoming PROGRAM. The State must address those issues that require corrective action prior to full PROGRAM approval within 18 months of EPA's interim approval of the Wyoming PROGRAM.

At the time of this notice, the State had not made an affirmative showing of legal authority to regulate sources within the exterior boundaries of Indian Reservations in Wyoming under the Act. Therefore, interim approval of the Wyoming PROGRAM will not extend to lands within the exterior boundaries of Indian Reservations. Until the State makes such a showing, part 70 sources within the exterior boundaries of Indian Reservations in Wyoming will be subject to the federal operating permit program to be promulgated in 40 CFR part 71, or subject to the program of any Tribe delegated such authority under section 301(d) of the Act. The EPA anticipates promulgating an Indian Air Regulation, at which time how the State defines Indian lands could become an approval issue.

B. Response to Comments

The comments received on the September 23, 1994 direct final rule in the Federal Register promulgating interim approval of the Wyoming

PROGRAM, and EPA's response to those comments, are as follows:

Comment #1: The commenter objected to EPA's proposed approval of Wyoming's preconstruction permitting program for purpose of implementing section 112(g) of the Act during the transition period between title V program approval and adoption of a State rule implementing EPA's section 112(g) regulations. The commenter argued that there is no legal basis for delegating to Wyoming the section 112(g) program until EPA has promulgated a section 112(g) regulation and the State has a section 112(g) program in place. In addition, the commenter argued that the Wyoming program fails to address critical threshold questions of when an emission increase is greater than de minimis and when, if it is, it has been offset satisfactorily.

EPA Response: EPA disagrees with the commenter's contention that section 112(g) cannot take effect until after EPA has promulgated implementing regulations. The statutory language in section 112(g)(2) prohibits the modification, construction, or reconstruction of a hazardous air pollutant (HAP) source after the effective date of a title V program unless maximum achievable control technology (MACT) (determined on a case-by-case basis, if necessary) is met. The plain meaning of this provision is that implementation of section 112(g) is a title V requirement of the Act and that the prohibition takes effect upon EPA's approval of the State's PROGRAM regardless of whether EPA or a state has promulgated implementing regulations.

The EPA has acknowledged that states may encounter difficulties implementing section 112(g) prior to the promulgation of final EPA regulations and has provided guidance on the 112(g) process (see April 13, 1993 memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities" and June 28, 1994 memorandum entitled, "Guidance for Initial Implementation of Section 112(g)," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.) In addition, EPA has issued guidance, in the form of a proposed rule, which may be used to determine whether a physical or operational change at a source is not a modification either because it is below de minimis levels or because it has been offset by a decrease of more hazardous emissions. See 59 FR 15004 (April 1, 1994). EPA believes the proposed rule provides sufficient guidance to Wyoming and its sources until such time as EPA's section 112(g) rulemaking