

changing the Agency's current rules governing R&D facilities.

EPA Response: The part 70 final rule (57 FR 32250, July 21, 1992) provides no special treatment or exemption from applicability for R&D facilities. The preamble to the proposed part 70 rule took comment on how to interpret the section 501(2) definition of "major source" (see 56 FR 21724, May 10, 1991). The preamble included a statement that aggregation of sources by Standard Industrial Classification (SIC) code at the source site to determine whether a source would be major is the approach intended by Congress and that aggregation by SIC code should be done in a manner consistent with New Source Review (NSR) procedures. The preamble further clarified that NSR procedures include the requirement that any equipment used to support the main activity at a site would also be considered as part of the same major source regardless of the 2-digit SIC code for that equipment.

The preamble to the final rule (57 FR 32264) stated that "Although EPA is not exempting R&D operations from title V requirements at this time, in many cases states will have the flexibility to treat an R&D facility as separate from the manufacturing facility with which it is co-located." EPA wishes to clarify that this is the case only where the R&D facility is not a support facility. If the R&D facility is a support facility (co-located with a separate source, under common ownership or control and 50% of the output of the R&D facility was used by the main activity), the emissions from this R&D facility must be included, along with all other emissions at the source, to determine if the source is "major" and thus applicable to Section 30 of the Wyoming rule. Prior to full PROGRAM approval, Wyoming must revise their rule to be consistent with part 70.

Comment #4: The commenter objected to EPA's dismissal of the Wyoming variance provision as not having any effect on the compliance requirements of the source or on enforcement actions against a source that has obtained such a variance from the State.

EPA Response: The EPA recognizes that Wyoming has the authority to use variances as a mechanism for establishing compliance schedules. The EPA wishes to clarify that it cannot recognize procedures for the issuance of state variances in the title V program and that, although the terms of a variance may be incorporated into a title V permit as a compliance schedule, a title V compliance schedule does not sanction noncompliance with an applicable requirement. Wyoming has

the responsibility under title V to establish a compliance schedule for sources that are out of compliance and place that schedule into the permit. The title V compliance schedule is properly established through appropriate enforcement action and not necessarily through variances. Wyoming does not need to take any action on this provision as it has not been identified as an approval issue.

Comment #5: The commenter objected to EPA's decision to grant interim approval to a program that does not provide emission trading under a permit cap in accordance with 40 CFR 70.4(b)(12)(iii) and contends that EPA has no authority to grant interim approval to any program that lacks this authority.

EPA Response: The EPA agrees that Wyoming must provide emission trading under a permit cap in its part 70 program. The EPA has determined that this deficiency is an issue that must be corrected before full approval may be granted and that this deficiency does not interfere with the EPA's ability to grant interim approval. 40 CFR 70.4(d)(3)(viii) requires that programs provide operational flexibility consistent with 40 CFR 70.4(b)(12) before the program may be granted interim approval. The EPA notes that the Wyoming program does implement another required type of operational flexibility, 40 CFR 70.4(b)(12)(i). In addition, Wyoming has submitted a letter, dated November 16, 1994, which clarifies their authority to provide emission trading under a permit cap. Specifically, the State's November 1994 letter stated that Sections 30(h)(i)(H) and 30(h)(i)(J) of the State's operating permit regulations provide authority for the State to issue permits "allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements." Thus, the State has provided clear authority to implement emissions trading under a permit cap. The EPA has determined that the Wyoming PROGRAM substantially meets the requirements of 40 CFR 70.4(b)(12) because it implements the mandatory operational flexibility provision of 40 CFR 70.4(b)(12)(i) and has adequate authority to issue permits to implement 40 CFR 70.4(b)(12)(iii).

Comment #6: The commenter stated that they did not have a problem with the way "prompt" is defined for deviation reporting in the Wyoming program but added that they did have a problem with the way the definition has

been handled in other interim approval notices.

EPA Response: The Wyoming PROGRAM allows the State to define "prompt" for deviation reporting in each individual permit. Since the commenter did not have a problem with the way "prompt" reporting of deviations is handled in Wyoming, EPA will not respond to that comment. In addition, it would be inappropriate in this notice to comment on how the definition of "prompt" was handled in notices for other states' part 70 approvals.

Comment #7: The commenter noted a typographical error in the Federal Register notice proposing interim approval of the Wyoming PROGRAM (59 FR 48802) on page 48804 under paragraph #4 titled "Provisions Implementing the Requirements of Other Titles of the Act." Part b of this paragraph titled "Implementation of 112(g) Upon Program Approval" refers to Wyoming's preconstruction permitting program found in section 24, which is an incorrect reference. The correct reference to the Wyoming preconstruction permitting program should be section 21.

EPA Response: The reference to section 24 was incorrect and should have read "section 21".

C. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by the State of Wyoming on November 19, 1993. The State must make the following changes to receive full approval: (1) Section 30(a)(ix) must be revised to assure R&D support facilities are included in major source determinations; (2) Sections 35-11-901(a), (m) and (n) of the WEQA, which appear to reduce the penalty for civil violations committed by surface coal mine operations from a maximum of ten thousand dollars per day to five thousand dollars per day, must be revised, or clarified in an Attorney General's Opinion, to indicate that the five thousand dollar penalty relates only to activities subject to the Surface Mining Control and Reclamation Act; (3) Section 35-11-901(a) of the WEQA must be revised to include language that provides strict liability for corporate officers, directors or agents in civil actions; (4) Section 35-11-901(j) of the WEQA must be revised to provide for a per day, per violation penalty for false statements or tampering with monitoring devices; (5) Section 30(c)(ii)(A)(III)(1) must be revised to include language similar to the general provision in 40 CFR 70.5(c), or the State must provide an Attorney General's