with the enhanced I/M performance standard for NO_X. If a violation of the ozone NAAQS occurs in the Toledo or Dayton area(s), the exemption from the requirements of section 182(f) of the Act in the applicable area(s) shall no longer apply.

X. Procedural Background

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

XI. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's exemptions do not create any new requirements, but allow suspension of the indicated requirements for the life of the exemptions. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Dated: January 5, 1995.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Supart KK—Ohio

2. Section 52.1879 is amended by adding new paragraph (f) to read as follows:

§ 52.1879 Review of new sources and modifications.

* * * * *

(f) Approval—USEPA is approving two exemption requests submitted by the Ohio Environmental Protection Agency on September 20, 1993, and November 8, 1993, for the Toledo and Dayton ozone nonattainment areas, respectively, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts the Lucas, Wood, Clark, Greene, Miami, and Montgomery Counties from the requirements to implement reasonably available control technology (RACT) for major sources of nitrogen oxides (NO_X), nonattainment area new source review (NSR) for new sources and modifications that are major for NO_X, and the NO_X-related requirements of the general and transportation conformity provisions. For the Dayton ozone nonattainment area, the Dayton local area has opted for an enhanced inspection and maintenance (I/M) programs. Upon final approval of this exemption, the Clark, Greene, Miami, and Montgomery Counties shall not be required to demonstrate compliance with the enhanced I/M performance standard for NO_X. If a violation of the ozone NAAQS is monitored in the Toledo or Dayton area(s), the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

3. Section 52.1885 is amended by adding new paragraph (r) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(r) Approval—USEPA is approving two exemption requests submitted by the Ohio Environmental Protection Agency on September 20, 1993, and November 8, 1993, for the Toledo and Dayton ozone nonattainment areas, respectively, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts the Lucas, Wood, Clark, Greene, Miami, and Montgomery Counties from the requirements to implement reasonably available control technology (RACT) for major sources of nitrogen oxides (NO_X), nonattainment area new source review (NSR) for new sources and modifications that are major for NO_X, and the NO_X-related requirements of the general and transportation conformity provisions. For the Dayton ozone nonattainment area, the Dayton local area has opted for an enhanced inspection and maintenance (I/M) program. Upon final approval of this exemption, the Clark, Greene, Miami, and Montgomery Counties shall not be required to demonstrate compliance with the enhanced I/M performance standard for NO_X. If a violation of the ozone NAAQS is monitored in the Toledo or Dayton area(s), the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

[FR Doc. 95–1254 Filed 1–18–95; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 70

[WY–001; FRL–5134–4]

Clean Air Act Final Interim Approval of Operating Permits Program; State of Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Wyoming 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: February 21, 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

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

is finalized and subsequently adopted by the State.

The EPA is aware that Wyoming lacks a program designed specifically to implement section 112(g). However, Wyoming does have a preconstruction review program that can serve as a procedural vehicle for establishing a case-by-case MACT or offset determination and making these requirements federally enforceable. The EPA approval of Wyoming's preconstruction review program clarifies that it may be used for this purpose during the transition period to meet the requirements of section 112(g).

The EPA believes that Wyoming's preconstruction review program will be adequate because it will allow Wyoming to select control measures that would meet MACT, as defined in section 112 of the Act, and incorporate these measures into a federally enforceable preconstruction permit. Wyoming's preconstruction permitting program allows permit requirements to be established for all air contaminants (which is broadly defined at Section 21 of the WAQSR) and includes all of the HAPs listed in Section 112(b) of the Act.

Another consequence of the fact that Wyoming lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from the criteria in section 112(g). EPA will expect Wyoming to utilize the statutory provisions of section 112(g) and the proposed rule as guidance in determining when case-by-case MACT or offsets are required. As noted in the June 28, 1994 guidance, EPA intends to defer wherever possible to a State's judgement regarding applicability determinations. This deference must be subject to obvious limitations. For instance, a physical or operational change resulting in a net increase in HAP emissions above 10 tons per year could not be viewed as a de minimis increase under any interpretation of the Act. The EPA would expect Wyoming to be able to issue a preconstruction permit containing a case-by-case determination of MACT in such a case even if review under its own preconstruction review program would not be triggered.

Comment #2: The commenter questioned the need for Wyoming's title V program enforcement authority to be based on State law defining civil individual and corporate liability and asserted that EPA's requirement that the State program include strict liability for corporate officers, directors or agents in civil actions is not compelled by the Clean Air Act Amendments of 1990.

EPA Response: The Wyoming Environmental Quality Act (WEQA) states in section 35–11–901(a) that "Any person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of this act * * * is liable to either a penalty of not to exceed ten thousand dollars ($10,000.00) for each day during which violation continues * * *." On its face, section 35–11–901(a) establishes a more stringent burden of proof for civil violations for corporate directors, officers, or agents than for other persons. Based on EPA's position that this distinction is inconsistent with title V of the Act and part 70, EPA stated in the **Federal Register** notice proposing interim approval of the Wyoming PROGRAM that section 35–11–901(a) needs to be revised to include language that provides strict liability for corporate officers, directors or agents in civil actions.

The commenter stated that "the federal statutory standard for approval of state permit programs does not require strict corporate liability in civil actions. Under 42 U.S.C. 7661a(b)(5)(E), Congress mandated only that states seeking approval of permit programs have "adequate authority" to "enforce permits * * * including authority to recover civil penalties in a maximum amount of not less than $10,000 per day of violation." There is nothing in the State's statutory or regulatory scheme that suggests that Wyoming lacks either the will or the ability to impose civil penalties to enforce operating permits, as mandated by the Act. EPA's insistence on statute revision is, therefore, an example of Agency overreaching."

However, section 502(b)(5)(E) of the Act requires the EPA to promulgate "* * * regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following: * * * (5) A requirement that the permitting authority have adequate authority to: * * * (E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and appropriate criminal penalties * * *."

Pursuant to section 502(b)(5)(E), EPA promulgated 40 CFR 70.11(a)(3) which requires that the state's part 70 programs contain the enforcement authority "To assess or sue to recover in court civil penalties * * * according to the following: (i) Civil penalties shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry or monitoring activities or, any regulation or orders issued by the permitting authority. These penalties shall be recoverable in a maximum amount of not less than $10,000 per day per violation. State law shall not include mental state as an element of proof for civil violations."

It is well established that the Act imposes a strict liability standard for assessing compliance violations. *United States* v. *JBA Motorcars*, 839 F. Supp. 1572 (D.C.Fla. 1993). Further, strict liability is essential to meet the purpose of the Act to protect and improve the quality of the nation's air. *United States* v. *B & W Investment Properties*, No. 94–1892, (7th Cir. Oct. 24, 1994), LEXIS 29713.

Wyoming's provision which requires a mental state as an element of proof for corporate civil violations is inconsistent with the general purpose of the Act. More specifically, Wyoming's provision is inconsistent with the basic framework for effective enforcement of the title V program established at 40 CFR 70.11(a)(3)(i) which does not distinguish between corporate and personal liability. The commenter's objection to a requirement clearly articulated in part 70 should have been raised in a challenge to the rule itself, rather than in the context of an action to approve a state program pursuant to that rule. Finally, it is EPA's view that requiring a mental state as an element of proof for civil violations significantly hinders corporate compliance enforcement. As such, the provisions are insufficient to meet section 40 CFR 70.4(b)(3)(i) which requires Wyoming to issue permits and assure compliance with each applicable requirement and the requirements of part 70.

Based on the above, it is EPA's position that section 35–11–901(a) of the WEQA must be revised to require strict liability for civil violations for corporate entities. Because this provision is inconsistent with the Act and the regulations thereunder and adversely affects the Permitting Authority's ability to enforce title V requirements against corporate entities, this issue is a basis for granting Wyoming interim approval for the PROGRAM. Accordingly, Wyoming's PROGRAM must be revised to reflect strict liability for corporate entities to receive full PROGRAM approval.

Comment #3: The commenter objected to EPA's proposed action related to Wyoming's special rule exempting Research and Development (R&D) facilities and contended that EPA has not offered a compelling basis for

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

opinion, to clarify that the State will ensure that all applicable requirements are identified for any insignificant activities; (6) Section 30(i)(ii) regarding general permits must be revised, or the State must provide an Attorney General's Opinion, to clarify the public notice and comment requirements for general permits; (7) In the Federal Register notice proposing interim approval of the Wyoming PROGRAM, EPA stated that, prior to full PROGRAM approval, the State must clarify that Section 30(h)(i)(J) provides the State with authority to implement emissions trading under a permit cap, which is required by 40 CFR 70.4(b)(12)(iii), or revise Section 30 to provide such authority. In a letter dated November 16, 1994, the State of Wyoming clarified that it has the authority to implement the emissions trading under permit caps provision of 40 CFR 70.4(b)(12)(iii). EPA concurs with the State's authority to implement this provision; however, we are currently reevaluating the State's regulations to determine if a regulatory revision is also needed, prior to full PROGRAM approval, to assure consistency with the provisions of 40 CFR 70.4(b)(12)(iii); (8) The State must provide a definition of "Indian lands."

Refer to the technical support document accompanying this rulemaking for a detailed explanation of each PROGRAM deficiency.

This interim approval, which may not be renewed, extends until February 19, 1997. During this interim approval period, the State of Wyoming is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State of Wyoming. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Wyoming fails to submit a complete corrective program for full approval by August 19, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State of Wyoming 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 Wyoming 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 Wyoming, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that the State of Wyoming had come into compliance. In any case, if, six months after application of the first sanction, the State of Wyoming still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Wyoming'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 Wyoming 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 Wyoming, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State of Wyoming has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State of Wyoming 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 Wyoming 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 State of Wyoming 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 Wyoming 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 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 also 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 only applies to sources covered by the part 70 program.

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: December 27, 1994.

Kerrigan G. Clough,

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 Wyoming in alphabetical order to read as follows:

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

* * * * *

Wyoming

(a) Department of Environmental Quality: submitted on November 19, 1993; effective on February 21, 1995;

interim approval expires February 19, 1997.

(b) Reserved.

[FR Doc. 95-928 Filed 1-18-95; 8:45 am]

BILLING CODE 6560-50-P

---

40 CFR Part 81

[CA-103-1-6722 FRL-5125-2]

Designation of Areas for Air Quality Planning Purposes; State of California; Correction of Design Value for San Diego Ozone Nonattainment Area; Reclassification of San Diego Ozone Nonattainment Area to Serious

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces the EPA Region IX decision to reclassify the San Diego, California, ozone nonattainment area (San Diego) from severe to serious. San Diego was classified as a severe ozone nonattainment area by EPA on November 6, 1991 (56 FR 56694). However, EPA has determined that the ozone design value of .190 ppm published by EPA and used in classifying San Diego as a severe ozone nonattainment area was incorrect. The correct monitored ozone design value was .185 ppm. This design value falls within the range of values which would have provided the opportunity for the State to request reclassification of San Diego under section 181(a)(4) of the Clean Air Act, as amended in 1990 (CAA or the Act). Pursuant to section 110(k) of the Act, which allows EPA to correct its actions, EPA is today publishing the correct design value of .185 ppm and is granting the State's request to reclassify the San Diego nonattainment area under section 181(a)(4).

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Angela Baranco, Plans Development Section (A-2-2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744-1196.

SUPPLEMENTARY INFORMATION:

Background

Prior to the 1990 amendments to the Act, EPA identified and designated nonattainment areas with respect to the National Ambient Air Quality Standards (NAAQS). For such areas, States submitted State Implementation Plans (SIPs) to control emissions and achieve attainment of the NAAQS. The San Diego ozone nonattainment area (San Diego) was originally designated as nonattainment for ozone on March 3, 1978 (as well as for other pollutants not addressed in this document). The SIP for San Diego was first adopted in the early 1970's. The revised SIP was fully approved by EPA on November 25, 1983 (48 FR 53114) and December 28, 1983 (48 FR 57130).

Under the 1990 amendments to the Act, San Diego retained its designation of nonattainment and was classified as severe by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). This classification was required to be based on the design value for the area. The actual monitored value for San Diego was .185 ppm. This value was reported to the California Air Resources Board (CARB), which rounded the value to .19 ppm and submitted it to EPA. EPA published this number as .190 ppm in its November 6, 1991 Federal Register document.

CAA Provisions

A. Correction of Error Under Section 110(k)(6)

Section 110(k)(6) of the Act provides:

> Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

EPA interprets this provision to authorize the Agency to make corrections to a promulgation when it is shown to EPA's satisfaction that: (1) EPA erred in failing to consider or inappropriately considered information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate; and (2) other information persuasively supports a change in the promulgation.

EPA's initial action in classifying San Diego was based on an ozone design value of .190 ppm. That information was subsequently demonstrated to have been incorrect, and the true design value was .185 ppm. Accordingly, in today's action, EPA is correcting this error by publishing the correct design value of .185 ppm for San Diego.

B. Classification Adjustment Under Section 181(a)(4)

Section 181(a)(4) of the Act provides a 90-day period following publication of a classification during which any nonattainment area with a design value within 5 percent of the next higher or lower classification may request to be reclassified. When EPA published .190 ppm as the ozone design value, the San Diego planning staff concluded it could not take advantage of the five-percent classification adjustment provision because this value does not fall within 5 percent of the cutoff for classification as serious. However, the correct value of .185 ppm does fall within 5 percent of this number (.179 ppm). When the discrepancy in the ozone design values was discovered, the State requested that EPA reclassify San Diego. After determining that the original classification had been based on an erroneous design value, and that the error may be corrected pursuant to section 110(k)(6), EPA accepted the State's request, made by letter dated July 19, 1993, to reclassify the San Diego ozone nonattainment area from severe to serious under section 181(a)(4).

C. Criteria for Reclassification

Section 181(a)(4) of the CAA provides general guidelines to determine whether an area qualifies for a classification adjustment:

> In making such adjustment, the Administrator may consider the number of exceedances of the (NAAQS) for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

EPA interprets this provision to mean that the area must demonstrate that it can attain the ozone NAAQS by the earlier date required by the lower classification. As discussed in more detail in subsection 3 below, San Diego has submitted a preliminary demonstration that "but for transport", it would attain the ozone NAAQS by the 1999 attainment deadline for serious areas. Documentation concerning each of the section 181(a)(4) criteria has been submitted by San Diego as part of this demonstration and is discussed briefly below. For a detailed discussion and analysis of these submissions please refer to EPA's Technical Support Document (TSD).

1. Exceedances

San Diego submitted data concerning the number of exceedances per year from 1980 to 1992. This data shows a clear downward trend projecting zero exceedances in 1999.