Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 Subpart C as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add Temporary § 165.T05–054, to read as follows:

§ 165.T05–054 Safety Zone: Fireworks on the Bay Celebration, Chesapeake Bay, Virginia Beach, VA.

(a) *Location.* The following area is a safety zone: All waters of the Chesapeake Bay in the Captain of the Port, Hampton Roads zone as defined in 33 CFR § 3.25–10 within 500 feet of position 36–55–02N/076–03–27W in the vicinity of the First Landing State Park in Virginia Beach, VA.

(b) *Definition.* The following definition applies to this section: Captain of the Port Representative: Means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or the Captain of the Port Representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(A) The Captain of the Port, Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number (757) 668–5555 or (757) 484–8192.

(B) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM 13 and 16.

(d) *Effective date.* This regulation is effective from 9 p.m. to 10 p.m. eastern time, on July 4, 2006 and, if warranted due to inclement weather, July 5, 2006.

Dated: May 15, 2006.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E6–8553 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[EPA–HQ–OAR–2003–0179; FRL–8178–1]

RIN 2060–AN74

Proposed Rule Interpreting the Scope of Certain Monitoring Requirements for State and Federal Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this action is to request comments on a proposed interpretation of certain existing Federal air program operating permits regulations. This proposed

interpretation is that certain sections of the operating permits regulations do not require or authorize permitting authorities to assess or enhance existing monitoring requirements in implementing the operating permits independent of such monitoring required or authorized in other rules. Such other rules include the monitoring requirements in existing Federal air pollution control standards and regulations implementing State requirements. We propose to interpret these sections to require that title V permits contain the monitoring provisions specified or developed under these separate sources of monitoring requirements. We also formally withdraw a September 17, 2002 **Federal Register** proposal to revise the Federal operating permits program and with this action provide an interpretation of those rules different from that set forth in the 2002 proposal. This proposed interpretation will clarify the permit content requirements and facilitate permit issuance ensuring that air pollution sources can operate and comply with requirements.

DATES: Written comments must be received by July 17, 2006.

ADDRESSES: Submit your comments identified by Electronic Docket ID No. EPA–HQ–OAR–2003–0179 by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Fax: (202) 566–1741.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW.; Mail Code: 6102T, Washington, DC 20460.
- Hand Delivery: To send comments or documents through a courier service, the address to use is: EPA Docket Center, Public Reading Room, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Electronic Docket ID No. EPA–HQ–OAR–2003–0179. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise to be protected through *http://www.regulations.gov* or e-mail. The Web site is an ''anonymous access'' system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to us without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment as a result of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses.

Docket: All documents in the docket are listed in the Federal Docket Management System (FDMS) index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available (*e.g.*, CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT:
Peter Westlin, Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail code: D243–05, 109 TW Alexander Drive, Research Triangle Park, NC 27711, Telephone: (919) 541–1058.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Affect Me?

Categories and entities potentially affected by this action include facilities currently required to obtain title V permits under State, local, tribal, or Federal operating permits programs, and State, local, and tribal governments that issue such permits pursuant to approved part 70 and part 71 programs. If you have any questions regarding the applicability of this action, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

In addition to access to information in the docket as described above, you may also access electronic copies of the proposed rule and associated information through the Technology Transfer Network (TTN) Web site. Following the Administrator signing the notice, we will post the proposed rule on the Office of Air and Radiation's Policy and Guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/.* The TTN provides an information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/ttn/oarpg.*

You may access an electronic version of a portion of the public docket through the Federal eRulemaking Portal. Interested persons may use the electronic version of the public docket at *http://www.regulations.gov* to: (1) Submit or view public comments, (2) access the index listing of the contents of the official public docket, and (3) access those documents in the public docket that are available electronically. Once in the FDMS, use the *Search for Open Regulations* field to key in the appropriate docket identification number or document title at the Keyword window.

C. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

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D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

II. Background

EPA's State and Federal operating permits program regulations, 40 CFR parts 70 and 71, require that operating permits include applicable monitoring requirements. The ''periodic monitoring'' rules as described in §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) require that

> [w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), [each title V permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to [§ 70.6(a)(3)(iii) or § 71.6(a)(3)(iii)]. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of [§ 70.6(a)(3)(i)(B) and § 71.6(a)(3)(i)(B)].

Sections 70.6(a)(3)(i)(A) and 71.6(a)(3)(i)(A) require that permits contain ''[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) and 504(b) of the Act.'' In addition, §§ 70.6(c)(1) and 71.6(c)(1) require that each title V permit contain, *''[c]onsistent with paragraph (a)(3) of this section,* compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit'' (emphasis added).

On September 17, 2002 (67 FR 58561), we proposed to remove the introductory phrase *''[c]onsistent with paragraph (a)(3) of this section,''* from §§ 70.6(c)(1) and 71.6(c)(1) to clarify a policy we expressed in our responses to the citizen petitions regarding Pacificorp and Fort James Camas Mills facilities [1] (see discussion of these petitions below). The purpose of these revisions was to remove the introductory clause so that §§ 70.6(c)(1) and 71.6(c)(1) could be interpreted more clearly as establishing a regulatory standard for: (1) Assessing and enhancing existing monitoring requirements, or (2) adding new monitoring requirements separate from the application of the periodic monitoring rules. At that time, we believed the action would clarify what we viewed as the relationship between the *NRDC* and *Appalachian Power* [2] decisions regarding title V monitoring. In *Appalachian Power,* the Court held that permitting authorities may not, on the basis of the periodic monitoring rule in § 70.6(a)(3)(i)(B), require in permits that the regulated source conduct more frequent monitoring of its emissions than that provided in the applicable State or Federal standard, unless that standard ''requires no periodic testing, specifies no frequency, or requires only a one-time test.'' 208 F.3d at 1028. The *NRDC* decision implied that implementing parts 70 and 71 could fulfill the need to address enhanced monitoring under the Act. In *NRDC,* the Court noted that ''* * * the 1990 Clean Air Act Amendments did not mandate that EPA fit all enhanced monitoring under one rule and EPA has reasonably illustrated how its enhanced monitoring program, when considered in its entirety, complies with § 114(a)(3).'' 194 F.3d at 135.

We decided following those two decisions that we could interpret §§ 70.6(c)(1) and 71.6(c)(1) as an independent source of authority for permit writers to assess and enhance monitoring requirements through the operating permits process, and adopted that interpretation in our responses to citizen petitions for the permits proposed for the Pacificorp and Fort James Camas Mills facilities, as well as in the 2002 proposed rule. Simply put, the monitoring related portions of the petitions filed in 1998 and 1999 requested not only that the permits include existing monitoring requirements, but also asked us to require permitting authorities to: (1) Assess the sufficiency of the existing monitoring requirements beyond assessing their periodic nature, and (2) enhance the requirements as necessary to assure compliance with permit terms and conditions. We had documented that two-part monitoring assessment and enhancement process for parts 70 and 71 in the Periodic Monitoring Guidance [3] issued in 1998; however, we subsequently withdrew the Guidance as a result of the *Appalachian Power* decision, which vacated the Guidance on the grounds that it overreached the plain language of the periodic monitoring rules, §§ 70.6(a)(3) and 71.6(a)(3). The Court said in that decision that the plain language of these sections provided that monitoring requirements could be amended via the title V permitting process only where the applicable emission standard contains no monitoring requirement, a one-time startup test, or provides no frequency for monitoring. In our orders regarding the Pacificorp and Fort James petitions, we relied on §§ 70.6(c)(1) and 71.6(c)(1), rather than the periodic monitoring rules, to authorize an independent assessment of the sufficiency of the monitoring to provide an assurance of compliance.

The September 2002 proposal to revise §§ 70.6(c)(1) and 71.6(c)(1) by deleting the introductory clause was meant to clarify the regulations consistent with this previous interpretation. On that same day, we separately issued an interim final rule effective from September 17, 2002, until Nov. 18, 2002. 67 FR 58529 (Sept. 17, 2002). By promulgating this interim final rule, we suspended, for sixty days, the italicized prefatory language in § 70.6(c)(1) providing that all title V permits contain, *''[c]onsistent with paragraph (a)(3) of this section* compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' 67 FR 58532.

[1] *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants,* Petition No. VIII–00–1 (November 16, 2000) (Pacificorp) (available on the Internet at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/woc020.pdf),* and

In the Matter of Fort James Camas Mill, Petition No. X–1999–1 (December 22, 2000) (*Fort James*) available on the Internet at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/fort_james_decision1999.pdf.*

[2] *Natural Resources Defense Council* v. *EPA,* 194 F.3d 130 (DC Cir. 1999) (*NRDC*) and *Appalachian Power* v. *EPA,* 208 F.3d 1015 (DC Cir. 2000) (*Appalachian Power*).

[3] ''Periodic Monitoring Guidance,'' signed by Eric V. Schaffer, Director, Office of Regulatory Enforcement, and John S. Seitz, Director, Office of Air Quality Planning and Standards, September 15, 1998.

In reviewing both our September 17, 2002, proposal to include the sufficiency assessment as part of the title V operating permits program, as well as the public comments received, we decided after further reflection that the plain language of §§ 70.6(c)(1) and 71.6(c)(1) indicates that they direct permitting authorities to include monitoring under existing statutory and regulatory authorities in permits, but does not authorize or require them to assess the sufficiency of underlying monitoring requirements. Therefore, we published a final rule (69 FR 3202, January 22, 2004) in which we determined not to adopt the regulatory changes to parts 70 and 71 proposed in 2002. In the January 22, 2004 rule, we noted that the appropriate interpretation of §§ 70.6(c)(1) and 71.6(c)(1), consistent with the background and intent of parts 70 and 71, is that they do not provide a basis for requiring or authorizing review and enhancement of existing monitoring requirements in operating permits, independent of any other review and enhancement that be may required under other rules. In the January 22, 2004 notice, we identified other applicable regulatory vehicles that more appropriately address monitoring requirements other than the parts 70 and 71 general operating permits regulations and the periodic monitoring requirements. The types of monitoring requirements we referenced included: (1) monitoring directed by applicable requirements under the Act including, but not limited to, monitoring required under 40 CFR part 64, where it applies, as well as monitoring required under Federal rules such as new source performance standards of 40 CFR part 60 (NSPS), national emissions standards for hazardous air pollutants of 40 CFR parts 61 and 63 (NESHAP), acid rain rules of 40 CFR parts 72 through 78, and State, Tribal, and Federal implementation plan rules; and (2) such monitoring as may be required under the narrow definition of gap-filling as required under the periodic monitoring rules (§§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B)).

Petitioners challenged the Agency's January 22, 2004, rule on the basis that it unlawfully and arbitrarily prohibited permitting authorities from requiring additional monitoring in title V permits where existing monitoring obligations in underlying applicable requirements were not sufficient to assure source compliance.[4] On October 7, 2005, the United States Court of Appeals vacated the January 22, 2004, final rule on procedural grounds, holding that the final rule was not a ''logical outgrowth'' of our September 17, 2002, proposal in violation of the Administrative Procedure Act's notice-and-comment requirements.

III. What Does This Action Involve?

As mentioned in the prior section and as discussed below, we have decided to withdraw the revisions to §§ 70.6(c)(1) and 71.6(c)(1) that we proposed on September 17, 2002 (67 FR 58561). In addition, we propose for comment, based on a reasonable interpretation of the Act, that the plain language and structure of §§ 70.6(c)(1) and 71.6(c)(1) do not provide an independent basis for requiring or authorizing review and enhancement of existing monitoring in title V permits. We believe that other rules establish a basis for such review and enhancement, including: (1) The periodic monitoring rules of parts 70 and 71 and (2) compliance assurance monitoring of 40 CFR part 64 (62 FR 54900, October 22, 1997) where it applies. Other applicable regulatory requirements that address monitoring design and implementation, include, but are not limited to: (1) NSPS, (2) NESHAP, (3) acid rain program rules, and (4) State, tribal and Federal implementation plan rules approved under title I of the Act. In addition, we recognize and propose that there are current and future opportunities to advance monitoring through regulatory and other mechanisms more effectively than through a nonspecific requirement in §§ 70.6(c)(1) and 71.6(c)(1) of the operating permits rules that the proposed (September 17, 2002) revisions would have created.

A. Will the Regulatory Text of the Rules Change Under This Action?

No, this action does not change any regulatory text.

B. Is There a Need To Address Comments Received Concerning the September 17, 2002 Proposal?

We addressed significant comments received on the September 17, 2002, proposal in the January 22, 2004, rule and in a summary document available in the docket. While we refer to some of the comments in the discussion below, because this action withdraws the proposal, there is no further need to address the comments on the proposal.

C. What Is the Correct Interpretation of §§ 70.6(c)(1) and 71.6(c)(1)?

Notwithstanding the recitation in §§ 70.6(c)(1) and 71.6(c)(1) of monitoring as a permit element, we propose that the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is that these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement that may be required under other portions of the rules. Instead, these paragraphs require the permitting authority to include in title V permits a number of elements (*e.g.*, reporting, record keeping, compliance certifications) related to compliance; among these elements is the monitoring as specified in §§ 70.6(a)(3) and 71.6(a)(3) (*i.e.*, monitoring defined by the applicable requirements and periodic monitoring, if needed).

More specifically, both §§ 70.6(c)(1) and 71.6(c)(1) provide only that permits contain ''monitoring * * * requirements sufficient to assure compliance with the terms and conditions of the permit.'' This general language does not provide any indication of what type or frequency of monitoring is required. For monitoring, however, §§ 70.6(c)(1) and 71.6(c)(1) take on additional meaning when considered with the more detailed periodic monitoring rules in §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), which specify that periodic monitoring must be ''sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit,'' or with the monitoring required in other provisions of §§ 70.6(a)(3) and 71.6(a)(3). This means that either the monitoring from applicable requirements or the periodic monitoring included under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) satisfies the compliance provisions in §§ 70.6(c)(1) and 71.6(c)(1).

In summary, §§ 70.6(c)(1) and 71.6(c)(1) constitute general provisions that direct permitting authorities to include the monitoring required under *existing* statutory and regulatory authorities in title V permits along with other compliance related requirements. These provisions do not require or authorize a new and independent assessment of monitoring requirements to assure compliance.

D. What Are the Effects of This Action on Pacificorp and Fort James Petitions?

Our responses to the monitoring aspects of the Pacificorp and Fort James title V petitions were based on the same interpretation of § 70.6(c)(1) that we took in the September 17, 2002 proposal, under which we read that provision as requiring a sufficiency review of existing monitoring requirements. That interpretation of

[4] *Environmental Integrity Project* v. *EPA*, 425 F.3d 992 (D.C. Cir. 2005).

§ 70.6(c)(1) is different than the interpretation that we propose with this action. We are proposing that §§ 70.6(c)(1) and 71.6(c)(1) should be interpreted as not establishing a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement that may be required under §§ 70.6(a)(3) and 71.6(a)(3) or other Federal rules.

In fact, even if we had applied the interpretation of § 70.6(c)(1) in the Pacificorp and Fort James citizen petitions that we propose with this action, we believe that application of that different interpretation would have had a minimal impact on our response to the petitions. In the former instance, we required an already-installed continuous opacity monitoring system (COMS) to provide quarterly opacity data in lieu of quarterly Method 9 visible opacity readings. We note that the owners or operators would have collected the COMS data in any case and reported any excursions as other information available as part of the annual compliance certification. In the latter instance, we relied on our sufficiency monitoring interpretation of the rule in response to one of the approximately twenty monitoring provisions at issue in the Fort James permit by requiring a sufficiency review of a newly-developed control device inspection performed monthly for an annual particulate matter standard. While our request for documentation of the link between inspections and maintenance of the annual emissions limit was appropriate, our authority under the periodic monitoring rules allowed us to point out there was no frequency of monitoring specified in the standard. Thus, we did not need to comment pursuant to §§ 70.6(c)(1) and 71.6(c)(1) on the adequacy of the frequency of monitoring established by the permitting authority.

Under the circumstances that we have just described, we believe that follow-up activity with regard to the Pacificorp or Fort James permits is unnecessary. If, after the public comment period, we decide to finalize the interpretation of §§ 70.6(c)(1) and 71.6(c)(1) that we propose with this action, the owners or operators of those facilities may choose to revisit these particular terms and conditions in their permits via the permit revision process or at permit renewal. Such revisions may include deleting redundant quarterly Method 9 visible opacity readings via permit streamlining [5] given that the COMS is already required and provides essentially the same data continuously.

E. How Do We Intend To Advance Better Monitoring?

As the Court noted in *NRDC,* EPA's enhanced monitoring program to assure compliance with applicable requirements is not, and need not be, implemented under a single rule. 194 F.3d at 135. Our enhanced monitoring program encompasses a number of regulatory and other mechanisms to improve and advance better monitoring for stationary sources subject to air emissions regulations implementing the Act.

Central to the program is the development of over 90 source category-specific regulations (*e.g.*, NESHAP regulations in 40 CFR part 63) since 1990 that address monitoring to assure compliance with emissions limitations. The program to address enhanced monitoring also includes 40 CFR part 64, the CAM rule, that requires owners or operators who rely on add-on control devices (*e.g.*, fabric filters and scrubbers) to meet applicable emissions limits to assess existing monitoring requirements according to prescribed procedures and operating criteria. In the preamble to the CAM rulemaking (62 FR 54900, October 22, 1997), we noted that ''* * * part 64 is intended to address: (1) The requirement in title VII of the 1990 Amendments that EPA promulgate enhanced monitoring and compliance certification requirements for major sources, *and* (2) the related requirement in title V that operating permits include monitoring, compliance certification, reporting and recordkeeping provisions to assure compliance.'' (emphasis added). We clearly indicated by this statement that part 64 will address and satisfy the monitoring requirements required for those permitted facilities subject to the CAM rule.

In the CAM rule, we also recognized that the basis for monitoring sufficient to assure compliance is inherent in many existing regulations. For example, we noted that ''* * * monitoring of covered units and sources under some NSPS may be sufficient to meet part 64 requirements; however, the question of sufficiency of any particular monitoring requirement from a non-exempt standard will have to be determined in accordance with the requirements of part 64.'' (62 FR 59940, October 22, 1997). Thus, part 64 requires the source owner or operator to design, submit, and implement new monitoring as needed to assure compliance with existing (*e.g.*, pre-1991) regulatory requirements and, by doing so, satisfy the statute.

We also are continuing to pursue the four-step strategy that we described in the January 22, 2004, rulemaking for improving existing monitoring where necessary through rulemaking actions while reducing resource-intensive, case-by-case monitoring reviews. The interpretation of §§ 70.6(c)(1) and 71.6(c)(1) that we propose with this action is a first part of that strategy. Second, on February 16, 2005 (70 FR 7905), we published a request for comment on potentially inadequate monitoring in applicable requirements and on methods to improve such monitoring. We are reviewing comments received in response to that notice and intend to take appropriate action in response.

Third, we have also published a proposed rulemaking concerning the implementation of the national ambient air quality standard (NAAQS) for fine particulate matter (particulate matter with an aerodynamic diameter of less than 2.5 micrometers, or PM_{fine}). In conjunction with finalizing that rule, we plan to issue monitoring guidance that we intend to make available for public comment. We intend that such material would encourage States and Tribes to improve monitoring in SIPs and TIPs relative to implementing the NAAQS.

Fourth, many who commented on the September 17, 2002 proposed rule raised concerns that the rules implementing EPA's enhanced monitoring program do not yet address some existing requirements. In particular, they noted that there are requirements in existing rules that are not affected by 40 CFR part 64 (*e.g.*, units with control measures other than add-on devices), post-1990 NESHAP and NSPS, or the soon-to-be-developed SIP rules such as the PM_{fine} implementation rules. We agree and have learned through implementing the operating permits and other regulatory programs that there continue to be opportunities to improve monitoring in existing requirements, achieve improved compliance, and assure emissions reductions.

IV. What Is the Policy Rationale for This Action?

This action clarifies the role that the title V permitting process plays in ensuring that the statutory monitoring requirements are met. Several policy considerations—many of which were raised in comments on the 2002 proposed rule—have motivated our decision to pursue an approach to title V monitoring that will achieve necessary improvements in the monitoring required of title V sources primarily through national rulemakings

[5] 40 CFR 70.6(a)(3)(i)(A).

or guidance for States to revise their SIP rules, rather than through authorizing or requiring permitting authorities to perform case-by-case monitoring.

First, this approach will improve the balance between the responsibility that States and other permitting authorities have for issuing and implementing title V permits and our responsibility for developing rules establishing monitoring requirements sufficient to meet the Act's monitoring requirements. The interpretation we propose would limit the authority of permitting authorities under §§ 70.6(c)(1) and 71.6(c)(1) to conduct case-by-case assessments of the sufficiency of monitoring required by other rules. We emphasize that this interpretation relative to parts 70 and 71 does not affect the State, Tribal, or other permitting agency's authority under other applicable rules to assess and impose alternative or new monitoring requirements. Such other authorities with respect to monitoring include the applicable SIP or TIP and the alternative testing and monitoring assessments and approval procedures in §§ 60.8, 60.13, 61.13, 61.14, 63.7, and 63.8. This interpretation also does not affect the development of monitoring necessary to implement other specific provisions relating to permits, including monitoring to allow for operational flexibility, monitoring under alternative scenarios, and monitoring consistent with permit streamlining (*e.g.*, §§ 70.4(d)(3)(viii) and (xi) and 70.6(a)(3)(i)(A)).

This proposed interpretation would avoid two significant permit implementation issues arising from our previous interpretation that §§ 70.6(c)(1) and 71.6(c)(1) require an independent assessment of the adequacy of otherwise applicable monitoring requirements. First, under this previous alternative interpretation, for each draft title V permit, permitting authorities would be required to review every permit term or condition, based on applicable requirements, and determine, generally without any definitive national guidance or regulation, whether the existing monitoring requirements are sufficient to assure compliance with such terms and conditions. The complex industrial sources and other sources subject to title V are subject to numerous applicable requirements and their draft permits contain numerous terms and conditions, which means that such reviews would be time-consuming and demand that permit writers develop and maintain highly technical expertise. This proposed interpretation that §§ 70.6(c)(1) and 71.6(c)(1) do not require such additional assessments and new monitoring development would relieve many significant burdens on State, local, and Tribal permitting authorities charged with implementing the rule that the previous interpretation would have imposed.

Second, under the previous interpretation, permit writers may have determined that existing monitoring would not assure compliance with the permit's terms and conditions and, in response, would have to propose new or revised monitoring to satisfy an unclear sufficiency requirement. This would have been without the benefit of an established process for determining what types of monitoring would satisfy the statutory and regulatory requirements. This approach would have required a significant level of expertise within the permitting authority and likely resulted in confusion and disagreements over the monitoring decisions made by permitting authorities. Some State and local permitting authorities have attributed delays in permit issuance to such case-by-case efforts to develop and approve monitoring for individual permits, as indicated by comments on the September 17, 2002, proposed changes to §§ 70.6(c)(1) and 71.6(c)(1). (See more detailed EPA responses to all significant comments raised on the proposal below and in a separate document placed in the docket.) In addition to the excessive burden and confusion issues outlined above, one permitting authority also indicated that such independent monitoring assessments under §§ 70.6(c)(1) and 71.6(c)(1) would likely result in relatively arbitrary and inconsistent monitoring decisions from permit to permit and make permit issuance more difficult. Thus, we believe that requiring States and other permitting authorities to assess the adequacy of all existing monitoring and, as necessary, to upgrade monitoring through the title V permitting process would place a significant, unmanageable, and unnecessary burden on those permitting authorities. We believe that this interpretation will mitigate those concerns.

We also received comments from industry representatives who indicated that requiring sufficiency reviews under §§ 70.6(c)(1) and 71.6(c)(1) would have placed undue burdens on title V sources. All industry representatives who provided comments stated that the 2002 proposed rule's changes to §§ 70.6(c)(1) and 71.6(c)(1) would lead to increased burdens on States and on sources. For instance, those who commented cited several examples indicating that case-by-case monitoring assessments and development of new monitoring requirements can delay permit issuance and renewals. Furthermore, commenters suggested that using rulemaking to revise monitoring requirements will assure that the new monitoring requirements are adopted consistent with the intent of those control technology standards.

Finally, we believe that this proposed interpretation of §§ 70.6(c)(1) and 71.6(c)(1) offers other advantages over the interpretation in the September 17, 2002 proposed rule. Specifically, we believe that applying a programmatic approach to reviewing, proposing, and promulgating improvements to existing monitoring requirements through Federal, State, or local rulemaking as we propose is an effective use of resources and available technical expertise. This proposed approach will be far more efficient and effective than relying on more resource-intensive, case-by-case sufficiency reviews under §§ 70.6(c)(1) and 71.6(c)(1) during the process of developing and reviewing permits. Monitoring developed through national rulemaking is also likely to result in greater consistency in monitoring requirements included in permits both within States and nationally. In addition, we expect that a national regulatory program to assess and improve potentially inadequate monitoring requirements will result in broader public input into monitoring decisions than is possible during individual permit proceedings. We believe this is true because formal national rulemaking procedures involve an opportunity for broad public comment and hearing, attracting a larger national audience of individuals more knowledgeable about technical issues specific to monitoring technologies as related to specific source categories, pollutants, and control measures. The resulting regulatory outcomes would facilitate the requirements of section 502(b)(6) of the Act for an adequate, streamlined, reasonable, and expeditious process for reviewing and implementing permit actions.

Moreover, national rulemakings are more likely than individual permit proceedings to result in better consideration of potential economic impacts. For example, Executive Order 12866 provides for the following analyses: (l) Stating the need for the proposed regulatory action; (2) examining alternative approaches to the problem; (3) quantifying benefits and costs and valuing them in dollar terms (where feasible); and (4) evaluating the findings on benefits, costs, and distributional effects. Statutory or regulatory provisions or Executive

Orders requiring detailed consideration of economic impacts or other burdens imposed by various types of monitoring apply to Federal rulemakings but are not required in individual permit proceedings. Thus, compared to the September 17, 2002 proposed rule's approach, the approach we propose has the added benefit of providing a greater degree of scrutiny of decisions concerning the potential economic impact of proposed monitoring requirements.

We believe it is necessary and appropriate to clarify through an interpretive rule that §§ 70.6(c)(1) and 71.6(c)(1) do not authorize or require States and other permitting authorities to assess the adequacy of all existing monitoring, and, as necessary, to upgrade monitoring through the title V permitting process. We believe that the comprehensive regulatory development approach for addressing monitoring has resulted and will continue to result in development and implementation of more consistent and more effective monitoring requirements, and reduced confusion about what monitoring requirements should be imposed in individual permits. When inadequate monitoring is improved through rulemaking at the national or State level, the improved monitoring can be incorporated into title V permits with little, if any, source-specific tailoring, thereby eliminating some of the variations in monitoring determinations inherent in case-by-case reviews. More consistent monitoring requirements in permits nationally should also help to eliminate concerns about potential inequities in monitoring amongst similarly-situated sources in different jurisdictions.

V. What Is the Legal Basis for This Action?

Various factors have prompted EPA's decision regarding §§ 70.6(c)(1) and 71.6(c)(1). EPA believes that the plain language of §§ 70.6(c)(1), and 71.6(c)(1), which begins with the phrase ''[c]onsistent with'' §§ 70.6(a)(3) and 71.6(a)(3), indicates that §§ 70.6(c)(1) and 71.6(c)(1) include and gain meaning from the more specific monitoring requirements in §§ 70.6(a)(3) and 71.6(a)(3). Both §§ 70.6(c)(1) and 71.6(c)(1) provide only that permits contain ''monitoring * * * requirements sufficient to assure compliance with the terms and conditions of the permit.'' Read in isolation, this general language does not provide any indication of what type or frequency of monitoring is required. Yet, for monitoring, §§ 70.6(c)(1) and 71.6(c)(1) take on practical meaning when they are read together with the more detailed periodic monitoring rules, which specify that periodic monitoring must be ''sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit,'' or with other provisions of §§ 70.6(a)(3) and 71.6(a)(3).[6] Thus, the plain language and structure of §§ 70.6(c)(1) and 71.6(c)(1) and the periodic monitoring rules show that §§ 70.6(c)(1) and 71.6(c)(1) support the interpretation that we are proposing.

In addition, the policy considerations discussed in section IV of this preamble support EPA's determination that our proposed interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is the correct one. In sum, this approach will better balance the responsibilities of States and other permitting authorities and EPA to improve monitoring where necessary to ensure that the Act's monitoring requirements are met. Compared to 2002 proposed rule's approach, this approach will also reduce burdens on title V sources, be more efficient from a resource standpoint, result in more equitable monitoring decisions, and allow for wider, more expert public input into monitoring decisions.

This interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is consistent with EPA's authority under the Act and the underlying rules. Congress granted EPA broad discretion to decide how to implement the title V monitoring requirements and the ''enhanced monitoring'' requirement of section 114(a)(3) of the Act.[7] Two provisions of title V of the Act specifically address rulemaking concerning monitoring. First, section 502(b)(2) of the Act requires EPA to promulgate regulations establishing minimum requirements for operating permit programs, including ''[m]onitoring and reporting requirements.'' 42 U.S.C. 7661a(b)(2). Second, section 504(b) authorizes EPA to prescribe ''procedures and methods'' for monitoring ''by rule.'' 42 U.S.C. 7661c(b). Section 504(b) provides: ''The Administrator *may by rule* prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. * * *'' (Emphasis added.) Id.

Other provisions of title V refer to the monitoring required in individual operating permits. Section 504(c) of the Act, which contains the most detailed statutory language concerning monitoring, requires that ''[e]ach [title V permit] shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.'' 42 U.S.C. 7661c(c). Section 504(c) further specifies that ''[s]uch monitoring and reporting requirements shall conform to any applicable regulation under [section 504(b)]. * * *'' Id. Section 504(a) more generally requires that ''[e]ach [title V permit] shall include enforceable emission limitations and standards, * * * and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.'' 42 U.S.C. 7661c(a).

Thus, title V clearly authorizes the Agency to require improvements to the existing monitoring required by applicable requirements in at least two ways. Under the statute, we may require case-by-case monitoring reviews as described in the revisions to parts 70 and 71 proposed on September 17, 2002. Alternatively, we may achieve any improvements to monitoring through Federal or State rulemakings to amend the monitoring provisions of applicable requirements themselves; these amended monitoring requirements may then be incorporated into title V permits without engaging in case-by-case sufficiency monitoring reviews.

This interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is consistent with EPA's authority under the Act and the underlying rules. We have exercised the authority the Act provides by establishing monitoring requirements under national rules, such as 40 CFR part 64, NSPS requirements under part 60, NESHAP requirements under part 61, MACT standards under part 63, and the continuous emissions monitoring rule under the acid rain program (40 CFR part 75). Based on comments received on the 2002 proposed rule and as a matter of policy (see section IV of this preamble), we believe that that the approach we propose is preferable to an

[6] For instance, each permit must contain, with respect to monitoring, (1) ''[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including [the CAM rule] and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) and 504(b) of the Act,'' see §§ 70.6(a)(3)(i)(A) and 71.6(a)(3)(i)(A); and (2) ''[a]s necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.'' §§ 70.6(a)(3)(i)(C) and 71.6(a)(3)(i)(C).

[7] Section 114(a)(3) of the Act provides that ''[t]he Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications.'' 42 U.S.C. 7414(a)(3).

approach requiring case-by-case monitoring reviews under §§ 70.6(c)(1) and 71.6(c)(1). We believe that improving the monitoring required of title V sources by developing new standards, by revising existing Federal standards that contain inadequate monitoring, and by encouraging States to revise SIP rules that contain inadequate monitoring, will balance the responsibilities of EPA with those of the States and other permitting authorities more clearly and will result in more equitable and more efficient monitoring decisions.

Our four-step approach, which includes this action, as well as developing PM_{fine} implementation guidance, responding with appropriate regulatory and other actions resulting from comments on the advance notice of proposed rulemaking that identify existing requirements with potentially inadequate monitoring, and continuing effort to enhance monitoring through separate rulemakings including future revisions to the CAM rule, will ensure that the Act's monitoring requirements will be met. First, our renewed emphasis on establishing monitoring requirements through rulemaking gives full effect to section 504(b) of the Act, which provides that ''[t]he Administrator may *by rule* prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants * * *'' 42 U.S.C. 7661c(b) (emphasis added). Second, this approach also is intended to ensure that section 504(c)'s command that each title V permit ''set forth * * * monitoring * * * to assure compliance with the permit terms and conditions'' will be satisfied through the combination of EPA (and as necessary State) rulemakings to address monitoring, and the addition to permits of such monitoring as may be required under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). See 42 U.S.C. 7661c(c). Finally, satisfying the specific monitoring requirements of section 504(c) will assure that the more general requirements of section 504(a) are satisfied as to monitoring.

The statutory monitoring provisions—particularly, section 504(c), which specifically requires that monitoring contained in permits to assure compliance *''shall conform to any applicable regulation under [section 504(b)]''*—clearly contemplate that monitoring in permits must reflect current regulations. We anticipate that some monitoring that appears in permits as required under existing applicable requirements could be improved; however, we believe that addressing such deficiencies through rulemaking will be the most expeditious approach to resolving such deficiencies.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more, adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under Executive Order 12866, we determined that this interpretative rule is a ''significant regulatory action'' because it raises important legal and policy issues. As such, we submitted this rule to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden and does not adopt the revision to the text of §§ 70.6(c)(1) and 71.6(c)(1) that we proposed in the September 17, 2002 notice. This action merely states that notwithstanding the recitation in §§ 70.6(c)(1) and 71.6(c)(1) of monitoring as a permit element, these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3). The information collection requirements in the existing regulations (parts 70 and 71) were previously approved by OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The existing ICR for part 70 is assigned EPA ICR number 1587.05 and OMB control number 2060–0243; for part 71, the EPA ICR number is 1713.04 and the OMB control number is 2060–0336. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20004 or by calling (202) 566–1672.

Under the Paperwork Reduction Act, burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration by category of business using the North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The originally promulgated part 70 and part 71 rules included the text of §§ 70.6(c)(1) and 71.6(c)(1), and this proposed interpretation does not revise that text. Moreover, any burdens associated with the interpretation of §§ 70.6(c)(1) and 71.6(c)(1) proposed in this action are less than those associated with any interpretation under the proposed rule and that we may have previously enunciated. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to these impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply where they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no new Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Rather, EPA merely states that §§ 70.6(c)(1) and 71.6(c)(1) do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring, independent of any review and enhancement as may be required under the periodic monitoring rules, §§ 70.6(a)(3) and 71.6(a)(3). Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this action contains no new regulatory requirements that might significantly or uniquely affect small governments. With this action, EPA sets out the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1), which is that they do not require or authorize title V permitting authorities—including any small governments that may be such permitting authorities—to conduct reviews and provide enhancement of existing monitoring through case-by-case monitoring reviews of individual permits under §§ 70.6(c)(1) and 71.6(c)(1). Therefore, this action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have any new federalism implications. The action will not have new substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This interpretation will not impose any new requirements. Accordingly, it will not alter the overall relationship or distribution of powers between governments for the part 70 and part 71 operating permits programs. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This action does not have new tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, this action imposes no new requirements that would impose compliance burdens beyond those that would already apply. Accordingly, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This action is not subject to Executive Order 13045 because it is not ''economically significant'' as defined under Executive Order 12866 and because it is not expected to have a disproportionate effect on children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action,'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action merely withdraws the revisions to the text of §§ 70.6(c)(1) and 71.6(c)(1) proposed on September 17, 2002 and proposes for comment that these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement of monitoring as may be required under §§ 70.6(a)(3) and 71.6(a)(3). Further, we have concluded that this action is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, § 12(d) (15 U.S.C. § 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this action because it does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. Our goal is to ensure that all citizens live in clean and sustainable communities. This action merely proposes an interpretation of an existing rule and includes no changes that are expected to significantly or disproportionately impact environmental justice communities.

Dated: May 25, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–8613 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2003–0216; EPA–HQ–OAR–2005–0149; FRL–8178–4]

RIN 2060–AM27 and RIN 2060–AM88

Regulation of Fuel and Fuel Additives: Refiner and Importer Quality Assurance Requirements for Downstream Oxygenate Blending and Requirements for Pipeline Interface

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the reformulated gasoline (RFG) regulations to allow refiners and importers of reformulated gasoline blendstock for oxygenate blending, or RBOB, the option to use an alternative method of fulfilling a regulatory requirement to conduct quality assurance sampling and testing at downstream oxygenate blending facilities. This alternative method consists of a comprehensive program of quality assurance sampling and testing that would cover all terminals that blend oxygenate with RBOB in a specified reformulated gasoline covered area. The program would be carried out by an independent surveyor funded by industry. The program would be conducted pursuant to a survey plan, approved by EPA, that is calculated to achieve the same objectives as the current regulatory quality assurance requirement.

This proposed rule also would largely codify existing guidance for compliance by parties that handle pipeline interface with requirements for gasoline content standards, recordkeeping, sampling and testing. The proposed rule also contains new provisions which would provide additional flexibility to these regulated parties. The proposed rule would also establish gasoline sulfur standards for transmix processors and blenders that are consistent with the sulfur standards for other entities, such as pipelines and terminals, that are downstream of refineries in the gasoline distribution system, and would clarify the requirements for transmix processors under the Mobile Source Air Toxics program.

DATES: *Comments:* Comments must be received on or before July 3, 2006. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before July 3, 2006.

Hearings: If EPA receives a request from a person wishing to speak at a public hearing by June 19, 2006, a public hearing will be held on July 3, 2006. If a public hearing is requested, it will be held at a time and location to be announced in a subsequent **Federal Register** notice. To request to speak at a public hearing, send a request to the contact in **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0216 for comments on the transmix provisions, and EPA–HQ–OAR–2005–0149 for comments on the RBOB provisions, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2003–0216 or EPA–HQ–OAR–2005–0149, as appropriate.
- Mail: Air Docket, Docket ID No. EPA–HQ–OAR–2003–0216, or EPA–HQ–OAR–2005–0149, as appropriate, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. EPA–HQ–OAR–2003–0216, or EPA–HQ–OAR–2005–0149, as appropriate. Such