copying at the Docket Management Facility, U.S. Department of Transportation, room PL–402, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this public docket on the Internet at *http://www.dms.dot.gov/.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LT Jennifer Stockwell, Hazardous Materials Standards Division, U.S. Coast Guard, telephone 202–372–1419, e-mail: *Hazmat@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION: In a letter to the International Maritime Organization (IMO) dated October 10, 2006, the Coast Guard sought to explain the effect of the revised Annex II and amended IBC Code for foreign ships trading at U.S. ports and U.S.-flag ships trading at foreign ports. That letter also advised the IMO that a relevant NVIC would be forthcoming and available online. On November 28, 2006, the Coast Guard issued NVIC 03–06. NVIC 03–06 provides guidance to foreign and U.S. vessels operating in U.S. waters that carry Noxious Liquid Substances (NLSs) in bulk, reception facilities that handle these products, and Coast Guard personnel conducting inspections and examinations. This NVIC addresses numerous implementation issues for owners and operators of vessels and reception facilities, and Coast Guard personnel with respect to the revised MARPOL Annex II, IBC Code, and current U.S. regulations. The Coast Guard encourages all affected parties to review NVIC 03–06 to ensure compliance with the revisions to MARPOL Annex II, IBC Code, and all applicable U.S. regulations. NVIC 03–06 encourages voluntary compliance, but is not intended to and does not impose legally binding requirements on any party outside the Coast Guard.

Dated: November 29, 2006.

J. G. Lantz,

Director of National and International Standards, Office of the Assistant Commandant for Prevention.

[FR Doc. E6–21335 Filed 12–14–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[EPA–HQ–OAR–2003–0179; FRL–8257–3]

RIN 2060–AN74

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of final action on interpretation.

SUMMARY: The purpose of this action is to finalize interpretation of certain existing federal air program operating permits regulations. We proposed an interpretation of these rules on June 2, 2006, and requested comment. This final interpretation responds to the comments we received. The final interpretation is that the plain language and structure of certain sections of the operating permits regulations 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. Such other rules include the monitoring requirements in certain other sections of the federal operating permits regulations (i.e., periodic monitoring), existing federal air pollution control standards, and regulations implementing State requirements to meet the ambient air quality standards.

This final interpretation clarifies the permit content requirements relative to the operating permits regulations and facilitates permit issuance ensuring that air pollution sources can operate and comply with requirements.

DATES: *Effective Date*: The final rule interpretation is effective on January 16, 2007.

ADDRESSES: The Electronic Docket ID No. EPA–HQ–OAR–2003–0179 contains the comments received and regulatory background materials including the Responses to Comments document. 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.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate; however, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

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; facsimile number (919) 541–1039; e-mail address: *westlin.peter@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

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 final rule and associated information through the Technology Transfer Network (TTN) Web site. The TTN provides an information and technology exchange in various areas of air pollution control. Following the Administrator signing the notice, we will post the final 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/*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/ttn/oarpg.* If you need more information regarding the TTN, call the TTN HELP line at (919) 541–5384.

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 *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. What Is the Procedure for Judicial Review?

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 13, 2007. Only those objections that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of the final rule amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20004.

II. Background

On June 2, 2006 (71 FR 32006), we proposed an interpretation of 40 CFR parts 70 and 71 regarding certain elements of those rules relative to requirements for monitoring to assure compliance with applicable requirements. In brief, the interpretation is that §§ 70.6(c)(1) and 71.6(c)(1) and the Clean Air Act requirements which they implement do not authorize Federal, State and local permitting authorities to assess the sufficiency of or impose new monitoring requirements. Instead, these sections 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''

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.'' The requirements in §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) continue 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)].''

This final interpretation of the provisions of §§ 70.6(c)(1) and 71.6(c)(1) does not affect the provisions of §§ 70.6(a)(3)(i) and 71.6(a)(3)(i) that require the permitting authority to incorporate the monitoring imposed by underlying applicable requirements into permits and to add periodic monitoring during the permitting process when the underlying requirements contains no periodic testing, specifies no frequency, or requires only a one-time test. The interpretation simply clarifies that §§ 70.6(c)(1) and 71.6(c)(1) do not provide any independent authority relative to assessing and revising existing monitoring beyond what is required in §§ 70.6(a)(3)(i) and 71.6(a)(3)(i).

III. What revisions did we make as a result of comments received on the proposed interpretation?

We made no regulatory revisions to parts 70 or 71 as a result to the comments we received on the proposed interpretation.

IV. What are our responses to significant comments?

A. The proposed interpretation is correct in principle and consistent with the plain language of the rule and the Clean Air Act.

Several commenters agreed that the interpretation is consistent with section 504(b) of the Clean Air Act and noted that this is the only provision of Title V that authorizes EPA to adopt new monitoring requirements. They further noted that this section of the Act empowers EPA to do so only through rulemaking. Other commenters wrote that the 1990 Clean Air Act Amendments and its legislative history are replete with statements that Title V permits were not intended to provide an opportunity for permit authorities to add substantive new requirements for sources required to obtain operating permits. EPA's regulations at 40 CFR 70.1(b) of the 40 CFR part 70, Operating Permit Program, repeat this principle clearly. The commenter said that EPA used this authority and the authority in section 114(a) for enhanced monitoring by promulgating 40 CFR part 64, the Compliance Assurance Monitoring Rule, in 1997. Several commenters agreed with the conclusion with regards to the Act and observed that, although the provisions in §§ 70.6(c)(1) and 71.6(c)(1) require permitting officials to ensure that permits contain certain elements related to compliance, like monitoring, the prefatory language requiring that the elements be ''[c]onsistent with paragraph (a)(3)'' makes clear that the substance of those elements is determined under §§ 70.6(a)(3) and 71.6(a)(3).

Other commenters indicated that language stating that the required monitoring is ''sufficient to assure compliance'' is not an authorization for permitting officials to make their own determinations regarding the sufficiency of monitoring in existing rules and permits, but a recognition that the monitoring required under §§ 70.6(a)(3)(i) and 71.6(a)(3)(i)—i.e., existing monitoring as supplemented by ''periodic monitoring,'' ''enhanced monitoring'' under CAA section 114(a)(3), and/or any other monitoring procedures established by rule under section 504(b)—are deemed sufficient to assure compliance. One commenter agrees with EPA that the Act does not compel EPA to provide such authority to itself or States. The commenter continues that allowing EPA or State permitting agencies to change or add to monitoring and compliance methods already established through State and federal rulemakings and permitting proceedings is inconsistent with Title V and with other substantive and procedural requirements of the Act.

Response: We generally agree with these commenters statements. We have determined 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. Sections 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 or independent assessment of monitoring requirements to assure compliance. We disagree with the comment that cites section 504(b) of the Clean Air Act as the only provision of title V that authorizes EPA to adopt new monitoring requirements. Congress granted EPA broad discretion to decide how to implement the title V monitoring requirements. Two provisions of title V specifically address rulemaking concerning monitoring (sections 502(b)(2) and 504(b)), and other provisions of title V refer to the monitoring required in individual permits (sections 504(c) and 504(a)). As more fully explained in the preamble for the proposed interpretation (71 FR at 32012), taken together these provisions clearly authorize the Agency to require improvements to the existing monitoring required by applicable requirements in at least two ways. First, we may require case-by-case monitoring reviews as described in the September 17, 2002 proposal. Alternatively, we may achieve any improvements in monitoring through federal or State rulemakings that amend the monitoring provisions of applicable requirements themselves.

We have chosen the latter approach because we believe it is preferable to an approach requiring case-by-case monitoring reviews conducted without a structured process such as is included in part 64. Consistent with this approach, we agree with commenters that the plain language of §§ 70.6(c)(1) and 71.6(c)(1), which begin with the phrase ''[c]onsistent with'' 70.6(a)(3) and 71.6(a)(3), indicates that the (c)(1) provisions include and gain meaning from the more specific monitoring requirements in the (a)(3) provisions. Read in isolation, the general language of §§ 70.6(c)(1) and 71.6(c)(1) does not provide any indication of what type of frequency of monitoring is required. When 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,'' these provisions take on practical meaning.

Finally, we also agree with commenters that the statute and our regulations clearly support the interpretation that permitting authorities are not required or authorized to assess or revise existing monitoring requirements. Rather, under the authority of part 70 or 71, permitting authorities are to impose monitoring requirements only where the underlying rule contains no monitoring of a periodic nature.

B. The proposed interpretation is incorrect in principle and is inconsistent with the plain language of the rule and the Clean Air Act.

Several commenters strongly opposed EPA's proposal. Two commenters contended that by interpreting the Title V regulations neither to require nor to authorize a permitting authority to include additional monitoring in a Title V permit to supplement periodic, but inadequate, monitoring obligations specified in an underlying applicable requirement, EPA's proposed regulatory interpretation would violate the plain statutory language requiring that each Title V permit include monitoring that is sufficient to ''assure compliance'' with each applicable requirement. One commenter indicated that EPA's proposed interpretation would violate the plain language of CAA section 504(c) requiring that ''[e]ach permit * * * shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.'' The commenter continued that EPA's proposed interpretation would violate the plain language of CAA section 504(a) requiring that ''[e]ach permit issued under this subchapter shall include enforceable emission limitations and standards, * * * a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary

to assure compliance with applicable requirements of this chapter.'' By using the word ''shall'' in section 504(a) and (c), Congress clearly stated its intent for monitoring sufficient to ''assure compliance'' with applicable requirements to be a mandatory element of each Title V permit.

This same commenter stated that EPA's proposed interpretation would violate Congress's unambiguous directive that EPA ensure that a Title V permitting authority possesses adequate authority to ''issue permits and assure compliance by all [Title V sources] with each applicable standard, regulation or requirement under this chapter.'' CAA section 502(b)(5)(A). If a permitting authority is prohibited from requiring additional monitoring in a source's Title V permit when it determines that existing monitoring is insufficient to assure compliance, the commenter said that the permitting authority plainly cannot do what the statute requires, namely, issue permits that ''assure compliance'' with each applicable requirement. Several commenters believed that EPA's proposed prohibition against supplemental monitoring would prevent EPA from fulfilling its statutory duty to object to Title V permits that lack monitoring sufficient to assure compliance, and would eliminate the public's right to petition EPA to fulfill that duty when the agency fails to object on its own accord. As EPA itself acknowledged in a D.C. Circuit brief,

> [i]n the absence of effective monitoring, emissions limits can, in effect, be little more than paper requirements. Without meaningful monitoring data, the public, government agencies and facility officials are unable to fully assess a facility's compliance with the Clean Air Act.[1]

Commenters further stated that EPA's interpretation violates CAA section 114(a)(3), which requires ''enhanced monitoring'' by ''any person which is the owner or operator of a major stationary source.'' The commenters noted that, in 1997, EPA implemented 40 CFR part 64, compliance assurance monitoring or CAM, requiring enhanced monitoring for a limited number of sources. Commenters indicated that EPA noted that even though the CAM rule did not cover all stationary sources, the rule satisfied section 114(a)(3) because ''all [T]itle V operating permits * * * include monitoring to assure compliance with the permit * * * includ[ing] all existing monitoring requirements as well as additional monitoring (generally referred to as 'periodic monitoring') if current requirements fail to specify appropriate monitoring.'' 62 FR 54,900, 54,904 (Oct. 22, 1997). Although the CAM rule alone did not satisfy the section 114 requirement for enhanced monitoring at all major sources, EPA argued that the CAM rule together with Title V requirements for monitoring sufficient to assure compliance at all major sources did satisfy section 114. If the EPA interprets its Title V regulations such that they neither require nor authorize permitting authorities to enhance existing monitoring requirements, EPA's regulations will no longer satisfy section 114's requirement for enhanced monitoring at all major sources.

Response: We disagree with commenters that our interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is inconsistent with the plain language of the Act. 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. Two provisions of title V of the Act specifically address rulemaking concerning development and implementation of monitoring for assuring compliance with applicable emissions limitations. 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.'' Second, section 504(b) authorizes EPA to prescribe ''procedures and methods'' for monitoring ''by rule.'' Section 504(b) specifically 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 * * *.''

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.'' Section 504(c) further specifies that ''[s]uch monitoring and reporting requirements shall conform to any applicable regulation under [section 504(b)] * * *.'' 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.'' 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 disagree with commenters that the interpretation with regards to parts 70 and 71 will eviscerate the States' abilities to issue permits that include effective monitoring requirements. There are numerous other means available and outlined in the Act, including the development of effective and complete monitoring regulations included in State implementation plans developed to implement the national ambient air quality standards. Further, there are existing and developing requirements for monitoring under federal rules such as new source performance standards (NSPS) of 40 CFR part 60, national emissions standards for hazardous air pollutants (NESHAP) of 40 CFR parts 61 and 63, acid rain rules of 40 CFR parts 72 through 78, and the compliance assurance monitoring rule of 40 CFR part 64.

With respect to the effect of this interpretation on State authority to address inadequate monitoring, we disagree that by finalizing this interpretation of the operating permits regulations we have limited or usurped the authority State agencies have to revise their own regulations or conduct case-by-case monitoring reviews pursuant to State authority.

We agree with commenters that there may be some monitoring required under existing applicable requirements that could be improved; however, we believe a better interpretation of the Act provides that we revise such monitoring through notice and comment rulemaking. For example, the interpretation that part 70 is not the vehicle for making changes to existing monitoring in no way prohibits the States from developing and implementing regulations in the context of the Act that include appropriate monitoring requirements to assure compliance with State regulations such as rules implementing the national

[1] Initial Brief of Respondent United States Environmental Protection Agency, Appalachian Power Co., et al. v. Envtl. Protection Agency, No. 98–1512 (D.C. Cir., Oct. 25, 1999).

ambient air quality standards (i.e., State Implementation Plans or SIPs).

We also are continuing to pursue the four-step strategy that we described in the January 22, 2004 notice (69 FR 3202) including improving existing monitoring where necessary through rulemaking actions while reducing resource-intensive and poorly supported case-by-case monitoring reviews. This clarifying interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is a first part of that strategy. A second step included a notice published on February 16, 2005 (70 FR 7905), in which we requested 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.

A third element of that strategy is addressing the monitoring required for 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, $PM_{2.5}$). In support of that final rule, we plan to issue monitoring guidance that we will make available for public comment (see proposal at 70 FR 65984, November 1, 2005). We intend that such material would encourage States and Tribes to improve monitoring in SIPs and TIPs relative to implementing the NAAQS. The last of the four steps is to address requirements in existing rules that are not now affected by 40 CFR part 64 (e.g., units with control measures other than add-on devices) including potentially expanding the applicability of part 64 and revising post-1990 NESHAP and NSPS. 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. We believe that the most effective route to meeting these opportunities is through regulatory review and revisions, as necessary. For example, recently published performance standards for solid and hazardous waste incineration (70 FR 74870 and 70 FR 75348) and commercial and industrial boilers (71 FR 9866) include not only improved monitoring requirements relative to existing requirements but also options for use of continuous emissions monitoring systems with appropriate incentives.

In sum, we believe that the plain language and structure of §§ 70.6(c)(1) and 71.6(c)(1) do not provide permitting authorities an independent basis to perform case-by-case monitoring reviews to resolve any such deficiencies. We believe that a comprehensive regulatory development approach more accurately reflects and is consistent with the Act's requirements for addressing improved monitoring. Further response beyond what we note above regarding the scope and effect of the periodic monitoring provisions of §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) is beyond the scope of the proposal.

C. The effect of the rule on previous permit decisions is not minimal and resultant conditions should be removed from permits.

Several commenters disagreed with the Agency's assertion that the effect of this proposed interpretation would or should have minimal effect on existing permits. One commenter recognized that EPA acknowledges in this rulemaking that its responses relative to the monitoring for the Pacificorp and Fort James Camas Mills facilities [2] permit petitions were based on an improper interpretation of § 70.6(c)(1). Further, the commenters disagreed with the Agency's conclusion that this legal interpretation of the monitoring requirements had a ''minimal'' effect on EPA's decisions relative to those permits and hence ''follow-up activity with regard to the Pacificorp or Fort James permits is unnecessary.'' The commenter instead identified facility owners who believe that, in a number of instances, the addition of monitoring terms by States have created problems and should be revisited.

Another commenter said that if EPA were to change the stringency of monitoring without evaluating and revising the stringency of the emission standards, this change could, by default, increase the stringency of the underlying emissions standard. This is because the stringency of an emissions standard is a function of an emission limit, the method for measuring emissions, and the monitoring requirements contained in the standard. Only by evaluating the monitoring in conjunction with the underlying emissions limitations in the rule can EPA assure that a control technology identified by the rule can meet a standard. This is a particular issue under § 70.6(c)(1) in which there is no standard against which monitoring is to be judged and little or no backstop against which a source can challenge the imposition of overly stringent monitoring provisions in its permit. Such an approach would effectively allow States to alter federally-established emissions standards by changing the compliance method and the manner in which compliance and violations of the Clean Air Act are established, an authority Congress gave to EPA alone. Moreover, additional monitoring could impose new substantive and potentially costly requirements on sources ostensibly under the authority of Title V. As stated in § 70.1, Title V does not provide EPA or the States with authority to create new substantive requirements which must be established in the same context in order to assure that EPA and States are not ''redefining'' compliance.

Other commenters indicated that review and removal of these terms, in some instances, will appreciably reduce the costs of the Title V program, which the Title V Task Force recently observed cost many times EPA's original cost estimates. Even with the administrative cost of removing these terms, the commenters believed there will be a net program benefit. One commenter asserted that EPA must state in the final rulemaking that removal of new monitoring requirements including recordkeeping and reporting that were added to permits pursuant to the 2002 and 1998 policies, which exceeded EPA's and the State authority in the instance of the 1998 policy voided by the D.C. Circuit in Appalachian Power, does not constitute ''backsliding.''

Response: We disagree that all monitoring currently included in individual permits that may be a result of an interpretation of § 70.6(c)(1) or § 71.6(c)(1) different than the proposed interpretation must be removed. There are other authorities that allow permitting authorities to revise monitoring that may or may not be included in applicable rules. First, the gap-filling requirements of the periodic monitoring provisions requires permitting authorities to establish and include monitoring requirements in the permit where the underlying requirement specifies no monitoring method, no frequency, or only a one-time test. Second, some States have separate authority under their existing State SIP regulations to revise existing monitoring through the addition of permit conditions as necessary to assure compliance with applicable requirements (e.g., State of Oregon Clean Air Act Implementation Plan,

[2] 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).*

Operating and Maintenance Requirements, as adopted under OAR 340–200–0040; New Jersey Department Of Environmental Protection, New Jersey Administrative Code Title 7, Chapter 27, Subchapter 22, 7:27–22.9 Compliance plans, (c)2.i.). When other authority to require monitoring exists, such monitoring may be retained (or revised as appropriate) in the permit but the permitting authority would revise the statement of the origin of and authority for the monitoring to reflect the proper legal authority, consistent with §§ 70.6(a)(1)(i) and 71.6(a)(1)(i) at an appropriate time. Also, when such monitoring is independently required solely by a State-only enforceable regulation, the monitoring would remain, but the permit would be revised to designate the monitoring as a non-federal requirement from a enforcement perspective, consistent with §§ 70.6(b)(2) and 71.6(b)(2).

Any source may apply for a modification of its permit to remove permit terms and conditions for monitoring included in the permit pursuant to an inappropriate interpretation of § 70.6(c)(1) or § 71.6(c)(1) (or an inappropriate interpretation of § 70.6(a)(3)(i)(B), such as the one set forth in the periodic monitoring guidance subsequently vacated by *Appalachian Power Co.* v. *EPA*, 208 F.3d 1015 (D.C. Cir. 2000)). A source may limit the scope of its permit modification application to those monitoring conditions it believes are affected by this rule. EPA encourages States to review such applications carefully and expeditiously (without expanding the scope of the modification). EPA believes that such modification is appropriate and permitting authorities should remove permit terms and conditions for monitoring where such monitoring was imposed pursuant to § 70.6(c)(1) and such monitoring is not justified under other legal authority.

Under the current parts 70 and 71 rules, changes such as removing existing monitoring, recordkeeping, and reporting are generally designated significant modifications. Further, any changes that would result in less stringent monitoring in a permit would most typically be treated as significant modifications by States. (See § 70.7(e)(2) and (e)(4).) Finally, in the event EPA is specifically required to review monitoring in a permit, for example, in the context of permit renewal or significant modification requests, we would have to ensure that such change conforms to all sections of the parts 70 and 71 rules and interpretations in effect at that time.

In the specific cases of the Pacificorp and Fort James citizen petitions, we noted in the preamble to the proposed interpretation that we believe that the decisions had minimal effect on compliance for these two facilities. In the former instance, while we acknowledge that EPA would not have been authorized to require additional monitoring under this interpretation of §§ 70.6(c)(1) and 71.6(c)(1), we required an already-required continuous opacity monitoring system (COMS) to provide opacity data in lieu of quarterly Method 9 visible opacity readings. We note that the owners or operators would have to collect the COMS data in any case and report any excursions or excess emissions as other information available as part of the semiannual reporting requirement (§ 70.6(a)(3)(iii)(A)) and the annual compliance certification. In the latter instance, we relied on the authority under the periodic monitoring rule (§§ 70.6(a)(3) and 71.6(a)(3)) to specify a frequency for an inspection in which there was no frequency of monitoring specified in the standard. In neither case did the decision change the stringency of the applicable requirement in averaging time or the applicable emissions limit.

We recognize and agree with the need to establish monitoring and testing requirements consistent with the intended compliance obligations. Part 64, for example, provides for such assessment and associated flexibility in monitoring selection on a case-by-case basis with a carefully constructed process that includes site-specific field testing and documentation to verify that the monitoring data will provide a reasonable assurance of compliance with the existing applicable requirement. In the established EPA regulatory development process (e.g., new and revised NSPS and NESHAP rules), we assess the availability of data and monitoring technology for establishing ongoing compliance obligations and evaluate cost and benefit implications and the application of various monitoring technologies. We believe that this approach is correct and consistent with the intent of the Act, sections 504(b) and (c), in developing and implementing monitoring requirements. On the other hand, the question of whether the stringency of existing emissions limits were changed by earlier case-by-case decisions about monitoring in preparing operating permits is not relevant to the issue of the authority to require such monitoring and not within the scope of this action.

D. The authority for the permitting authorities to fill periodic monitoring gaps should be reinstated.

Several commenters observed that the rule eliminated the authority of State and local agencies to include so-called ''gap-filling monitoring'' in permits in situations in which applicable requirements contain monitoring provisions, but such provisions are inadequate. The commenters said that EPA should reconsider reinstating the ability of the State and local agencies to include ''gap-filling monitoring'' in Title V permits in the meantime.

One commenter offered that finalization of that proposal will not affect the authority and obligation of State and local permitting authorities with approved part 70 operating permit programs to continue to require such supplemental, enhanced monitoring. The commenter asserted that the new interpretation that EPA proposes was not the agency's interpretation when EPA acted on part 70 program approvals for State and local permitting authorities. Nor is it the interpretation that EPA has held over the course of implementing the part 70 permit program since such initial approvals, as indicated in part by the agency objection letters and orders responding to Title V petitions, discussed above. Instead, the commenter contends, EPA's proposed new interpretation is a direct contradiction and refutation of EPA's longstanding interpretation, the opposite of that interpretation. The commenter suggested that the provisions of the permit programs approved prior to this latest interpretation will continue to govern permit monitoring decisions despite the final dispensation of the proposal, unless and until: (1) State, local and tribal permitting authorities choose to undertake rulemaking to change their more rigorous permitting authorities and practices, and weaken them by adopting EPA's new interpretation as a matter of State or local law; (2) EPA receives revised program submittals from State or local authorities, and issues proposed federal rulemakings to revise the previously approved State or local program for purposes of federal law, complete with notice and comment and opportunity for public hearing; and (3) EPA finalizes the proposed program revisions to codify the State or local's revised, weaker practice as a matter of federal law.

Another commenter said that by prohibiting States from enhancing the monitoring established in existing rules and SIPs, EPA is not only usurping States' authority to carry out their programs, but preventing the opportunity for States to devise innovative and creative approaches to compliance monitoring where

something beyond existing requirements exists. A commenter indicated that withdrawing the proposed interpretation and reinstating the States authority to impose new monitoring are necessary to ensure the health and safety of adjacent communities, to protect or further maintenance of the National Ambient Air Quality Standards, and to ensure that sources are required to correct compliance problems in a timely manner.

Response: We reassert that the authority in §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) to fill gaps in existing regulations with new periodic monitoring remains unaffected by this proposed interpretation. We disagree with commenters that our interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is inconsistent with the plain language of the Act, as discussed in detail above. Consistent with the broad authority the Act provides, we interpret these regulatory sections, as the rules are written, as not providing an authority to require permitting authorities to assess and revise existing monitoring requirements independent of the periodic monitoring requirements. In short, we have determined that other regulatory avenues (e.g., revising existing EPA rules with inadequate monitoring, expanding applicability of part 64, and providing guidance for implementing the $PM_{2.5}$ NAAQS) would be a more effective policy approach. We also disagree with the commenter that previously approved State and local permitting programs will have to be revised in response to this action. State and local permitting authorities are required to conduct approved title V permitting programs in accordance with the requirements of 40 CFR part 70 and any agreement between the permitting authority and EPA concerning operation of the program. As evident by this action, we have determined that §§ 70.6(c)(1) and 71.6(c)(1) do not require or authorize State/local/Tribal permitting authorities to review and revise existing monitoring requirements in operating permits.

E. Existing monitoring requirements in current rules are inadequate and case-by-case review and revision are necessary.

Several commenters suggested that while many rules include comprehensive and modern monitoring requirements, others do not. Commenters provided substantive and detailed comments and declarations previously submitted (in response to the February 16, 2005, notice, 70 FR 7905) to the Agency to support their contention that many existing federal regulatory monitoring requirements are insufficient to assure compliance. Additionally, commenters noted that many sources are not covered by updated NSPS or NESHAP rules that are intended to fill those gaps. Where updated and complete monitoring requirements already exist in federal or State rules, commenters believed that States are unlikely to consider that more rigorous monitoring is necessary. But where monitoring in existing rules is not sufficient, State permitting authorities are much better suited than the EPA to understand individual sources, their unique compliance histories and challenges, and to fashion reasonable monitoring requirements that will assure the public, the source, and the permitting authority of the source's ongoing compliance. By prohibiting States from enhancing the monitoring established in existing rules and SIPs, the commenter believed EPA is not only usurping States' authority to carry out their programs, but preventing the opportunity for States to devise innovative and creative approaches to compliance monitoring where something beyond existing requirements exists.

Another commenter noted that, regardless of federal requirements on gap filling, States independently have authority to gap-fill if they include such provisions in their rules. The commenter said that EPA can not attempt to limit State authority with this rulemaking. The commenter cites EPA assertions that improvements to monitoring through federal or State rulemakings (by amending the monitoring provisions of applicable requirements themselves) will avoid time spent in case-by-case sufficiency monitoring reviews in Operating Permits. The commenter also agreed EPA should improve the monitoring, recordkeeping, and reporting requirements in many of its rules; but disagree that this should substitute for independent authority to add monitoring and recordkeeping requirements on a case-by-case basis.

Response: While we agree that there may be examples of inadequate monitoring in existing rules, the proposed interpretation is about the appropriate regulatory means to address those instances. The comments providing examples of inadequate monitoring are not responsive to the proposal. As noted above, with respect to the effect of this interpretation on State authority to address inadequate monitoring, we disagree that by finalizing this interpretation of the operating permits regulations we have limited or usurped the authority State agencies have to revise their own regulations or conduct case-by-case monitoring reviews pursuant to State authority.

As we have stated previously, the interpretation that part 70 is not the appropriate vehicle for making changes to existing monitoring, other than to apply periodic monitoring to fill gaps in regulations. Further, the interpretation in no way prohibits the States from developing regulations that include appropriate monitoring requirements to assure compliance with State regulations such as SIPs. Likewise, this interpretation does not prohibit a permitting authority from implementing other State rule provisions including revising monitoring in existing rules through the permitting process to assure compliance with State regulations such as SIPs. We certainly encourage States to act through regulatory development or other means to apply monitoring as needed to assure ongoing compliance with State regulations. To the extent that States have authority under State law to perform case-by-case monitoring reviews and issue permits including additional monitoring, such monitoring should be included on the ''State-only'' side of the permit. We agree that EPA regulations must include monitoring sufficient to assure compliance and, as indicated above, we believe that the most effective route to effect this policy is for us to continue to improve such requirements by conducting additional rulemakings.

F. The Agency should provide further clarification or regulatory action on the effect of monitoring policies on enforcement.

One commenter requested some discussion from EPA concerning existing permits which contain monitoring requirements created prior to this interpretation of §§ 70.6(c)(1) and 71.6(c)(1) and have resulted in reported deviations from those permit conditions. Since EPA interpretations are being reversed, the commenter asked whether deviations from monitoring conditions set, without the legal standing of established rulemaking processes following existing statutes and regulations, would also be affected. Another commenter indicated that reading Title V as imposing some new criterion for enforceability on existing emissions standards beyond what Congress directed in section 114(a)(3) would be inconsistent with existing statutory requirements. This commenter also cited examples for which use of a different test method or procedure can lead to fundamental differences in results, due to differences in analytical method, data reduction, or measurement location. Even if the specified (or a

comparable) method is used, testing under conditions different from, or conducted more frequently than, the testing considered in setting the standard can reveal operating variability that was unknown or ignored when the standard was set. In short, the commenter noted that changing the method of measuring compliance with an emissions limitation can affect the stringency of the limitation itself.

The same commenter outlined how use of the specified method is also often necessary to preserve assumptions regarding cost. Accordingly, where emissions standards are subject to specific statutory criteria and regulatory review requirements, any revision to those standards must be accompanied by an evaluation of the revised standard, using specified administrative procedures, to ensure its consistency with statutory and regulatory review criteria. For example, when EPA or a State identifies a control technology under the criteria for a particular standard (e.g., identifies BDT for a particular NSPS), a revision to that standard (including specification of a new compliance method) is valid only if data show that the revised standard also can be reliably and consistently achieved with the original control technology. Even if achievability of the standard is not in question, the commenter noted, substitution of one compliance method for another is a substantive change that requires consideration of a number of factors, including the cost of that change.

Response: As noted above, the question of whether the stringency of existing emissions limits were changed by earlier case-by-case decisions about monitoring in preparing operating permits is not relevant to the issue of the authority to require such monitoring and not within the scope of this action. That is, whether §§ 70.6(c)(1) and 71.6(c)(1) authorize permitting authorities to assess or revise existing monitoring requirements different from assessment and revision under other regulations has no bearing on a source's compliance obligation under the applicable emissions limitation. The proposed interpretation addresses only whether part 70 or 71 is a proper vehicle for assessment and adjustment to existing monitoring requirements beyond other requirements for assessing or revising monitoring that may be required under §§ 70.6(a)(3)(i) and 71.6(a)(3)(i) or other regulations.

We disagree with commenters on the need to limit use of any data collected with monitoring that might be a result of a misinterpretation of the rule. To the extent that there are questions about whether data from monitoring developed under a previous interpretation are relevant to a compliance or enforcement decision, case-by-case review of any actions based on specific permit conditions would be more effective and appropriate. We believe that these situations will be very few in number.

V. 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, it has been 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. 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 revision of existing monitoring independent of any review and revision 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 1587.06 and OMB control number 2060–0243; for part 71, the EPA ICR number is 1713.05 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

The Regulatory Flexibility Act (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 final 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 interpretation does not revise that text. Moreover, any burdens associated with the interpretation of §§ 70.6(c)(1) and 71.6(c)(1) as described in this action are less than those associated with any interpretation under the rule and that we may have previously enunciated.

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 revision of existing monitoring, independent of any review and revision 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 of and revise 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 finalizes that these provisions in parts 70 and 71 do not establish a separate regulatory standard or basis for requiring or authorizing review and revision of existing monitoring independent of any review and revision 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 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 finalizes an interpretation of an existing rule and includes no changes that are expected to significantly or disproportionately impact environmental justice communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective on January 16, 2007.

Dated: December 11, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–21427 Filed 12–14–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2003–0090; FRL–8256–7]

RIN 2060–AN90

Final Extension of the Deferred Effective Date for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This document makes a minor correction to the preamble language for the final rule entitled ''Final Extension of the Deferred Effective Date for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas.'' The final rule was initially published in the **Federal Register** on November 29, 2006. This correction extends the time period for petitions for judicial review of this action from December 29, 2006 to January 29, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Driscoll, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC 27711, phone number (919) 541–1051 or by e-mail at: *driscoll.barbara@epa.gov* or Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304–05, Research Triangle Park, NC 27711, phone number (919) 541–5565 or by e-mail at: *cole.david@epa.gov.*

Correction

This document corrects section IV(L) to provide that the date by which a petition for judicial review of this action must be filed in the United States Court of Appeals for the District for Columbia Circuit, pursuant to section 307(b) of the Clean Air Act, is January 29, 2007.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: December 11, 2006.

William L. Wehrum,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E6–21376 Filed 12–14–06; 8:45 am]

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