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Part IV

Environmental Protection Agency

40 CFR Parts 70 and 71

State and Federal Operating Permits Program: Amendments to Compliance Certification Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[AL–FRL–7519–5]

RIN 2060–AK11

State and Federal Operating Permits Program: Amendments to Compliance Certification Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action on a March 2001 proposal to amend the State Operating Permits Program and the Federal Operating Permits Program. The amendments respond to a decision of the United States Court of Appeals for the District of Columbia Circuit (October 29, 1999) remanding to us those revisions to the compliance certification requirements that accompanied promulgation of the compliance assurance monitoring (CAM) rule (October 22, 1997) and that tailored the ongoing compliance certification content to the monitoring imposed by CAM. In particular, the Court ruled that the compliance certification must include whether the facility or source has been in continuous or intermittent compliance. We are removing the language in the 1997 revisions that addressed this requirement implicitly and replacing it with an express requirement tracking the statute.

EFFECTIVE DATE: The final rule amending parts 70 and 71 announced herein is effective on June 27, 2003.

ADDRESSES: We are not seeking comments on this final rule. A public version of the record for this action is available for public inspection in person and electronically. See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Grecia Castro, U.S. Environmental Protection Agency, Office Air Quality Planning and Standards, at (919) 541–1351. Facsimile: (919) 541–5509. e-mail: *castro.grecia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

These regulations may apply to you if you own or operate any facility subject to the compliance certification requirements of part 70 or 71. These regulations apply to, but are not limited to, owners or operators of all sources who must have operating permits under either of these programs. State, local, and tribal governments that are implementing the part 70 and 71 operating permits program are potentially affected to the extent that those governments must revise existing compliance certification requirements to make them consistent with these revisions.

B. How Can I Get Copies of Related Information?

1. Docket

The EPA has established an official public docket for this action under Docket Number OAR–2002–0062. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information or other information whose disclosure is restricted by statute. The official public docket for this action is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air and Radiation Docket is (202) 566–1742. The Docket Office may charge a reasonable fee for copying docket materials.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Contents of Today's Preamble

The information in this preamble is organized as follows:

I. Authority

The statutory authority for this final rule is provided by sections 114 and 501 through 507 of the Clean Air Act (CAA or the Act or the Statute), as amended (42 U.S.C. 7414a and 7661–7661f).

II. Background

A. Regulatory and Litigation Background

On October 22, 1997 (62 FR 54900), we promulgated part 64, the CAM rule, and revisions to parts 70 and 71, the State and Federal Operating Permits Programs. In particular, the 1997 revisions to parts 70 and 71 revised the rule language requiring responsible officials to indicate in the annual compliance certification whether the source's compliance certification was continuous or intermittent and replaced it with a requirement to indicate whether the certification was based on methods that provide continuous or intermittent data and whether deviations, excursions, or exceedances occurred. Subsequently, the Natural Resources Defense Council, Inc. (NRDC) and the Appalachian Power Company *et al.* (Industry) filed petitions with the United States Court of Appeals for the District of Columbia Circuit (Court) challenging several aspects of the parts 70 and 71 revisions. Among other issues, NRDC argued that the part 70 and 71 revisions were inconsistent with the Act's explicit requirement in section 114(a)(3) that compliance certifications identify whether compliance is

continuous or intermittent. On October 29, 1999, the Court issued a decision (see docket A–91–52, item VIII–A–1) *Natural Resources Defense Council* v. *EPA,* 194 F.3d 130 (D.C. Cir. 1999), on these challenges. The Court agreed with NRDC that EPA's removal from parts 70 and 71 of the explicit requirement that compliance certifications address whether compliance is continuous or intermittent revisions was contrary to the Statute. See section 114(a)(3)(D), 42 U.S.C. 7414(a)(3)(D). The Court wrote: ''While [section] 114(a)(3) clearly states that a major source's ''compliance certification shall include * * * whether compliance is continuous or intermittent[,]'' EPA only requires that a major source's compliance certification include ''[t]he identification of the method(s) * * * used by the owner for determining the compliance status * * * and whether such methods * * * provide continuous or intermittent data'' (40 CFR 70.6(c)(5)(iii)(B), 71.6(c)(5)(iii)(B)). The statute requires that certification include whether ''compliance''—not just ''data''—is continuous or intermittent'' (194 F.3d at 137). The Court thus remanded the regulations to EPA for the Agency to revise them in accordance with the Court's opinion (Id. at 138). In response to the Court's remand, we issued a direct final rule for ''Amendments to Part 70 and Part 71 Compliance Certification Requirements.'' These revisions to parts 70 and 71 inserted language into sections 70.6(c)(5)(iii)(C) and 71.6(c)(5)(iii)(C) to require that the responsible official for each subject facility include in the annual (or more frequent) compliance certification whether compliance during the period was continuous or intermittent. The original direct final rule notice, published March 1, 2001 (66 FR 12872), was accompanied by a proposal with the same revisions. In the March 1 notice, we indicated that we would withdraw the direct final rule if we received adverse comments and would respond to any adverse comments on the direct final rule as comments on the proposal. We subsequently received adverse comments on the direct final rule; however, through an inadvertent administrative error, we did not publish the withdrawal prior to the rule's April 30 effective date. To correct this oversight, we issued an amendment notice withdrawing the direct final rule, effective on November 5, 2001 (66 FR 55883).

B. Summary of Issues Raised by the Proposal

We received five letters from commenters, three of which were from industry groups, one from an environmental interest group and one from a local permitting agency. All comments are discussed in detail in the response to comments document that is part of the docket documents; those that are pertinent to the March 1, 2001, proposal are summarized below.

On the whole, the primary issue raised by the commenters on the March 1, 2001, proposal for this final rule is that neither the proposed rule nor the preamble provides clear guidance for responsible officials to know how to comply with the requirement to certify whether compliance with the permit terms and conditions was continuous or intermittent. Neither does the proposed rule or the preamble enable regulatory authorities and the public to understand the meaning of such statement in a certification, commenters asserted. Commenters urged us to clarify in the final rule when responsible officials must certify continuous compliance and when responsible officials must certify intermittent compliance.

Commenters stated that the explanation of our interpretation of continuous versus intermittent compliance certification, contained in the preamble for the March 1, 2001, proposal, was unclear. In general, commenters stated that our explanation of the meaning of continuous or intermittent compliance certification in the March 1, 2001, proposal is indirect, ambiguous, and would lead to inconsistent implementation rendering the compliance certifications meaningless. Commenters also pointed out that, according to our explanation, responsible officials under the same compliance conditions could arrive at different conclusions regarding their compliance status. Additionally, commenters noted that the March 1, 2001, proposal equates the compliance status of responsible officials collecting periodic data with that of responsible officials experiencing periods of noncompliance. Commenters also argued that substantive portions of the discussion referenced in the preamble of the March 1, 2001, proposal as guidance are no longer valid because this guidance was developed for the rules that the court in *NRDC* held were inconsistent with the Act.

Additionally, commenters expressed concern with our approach for revising the rule in the March 1, 2001, proposal and disagreed that it fully addressed the Court's direction expressed in the remand. One commenter representing environmental interests and two industry commenters noted that the proposal retained the requirement for responsible officials to identify in the compliance certification whether their monitoring methods provide continuous or intermittent data. Industry commenters urged us to remove this requirement in the final rule arguing that this requirement was originally in the rule due to the approach invalidated by the Court in *NRDC*. These commenters further argued that the Statute does not provide for this requirement and it only adds an unnecessary burden. One industry commenter suggested that if we would find that such requirement is necessary for implementing the amendments, we should impose it on permitting authorities to avoid mistakes in the classification of methods.

One industry commenter disagreed with our explanation, in section III.B. of the March 1, 2001, proposal's preamble, that permit terms and conditions that are the basis of the certification include applicable recordkeeping, monitoring and reporting provisions. The commenter also objected to the procedure for completing the compliance certification, suggested by this explanation, finding it confusing and impractical. The commenter argued that according to this procedure monitoring, recordkeeping and reporting requirements would need to be identified first as ''methods'' and then again as ''permit terms and conditions.'' Although, the commenter added, it would be unclear what ''methods'' to use to verify compliance with monitoring, recordkeeping and reporting requirements. This commenter further argued that a better reading of the regulations is that ''permit terms and conditions'' include only substantive terms such as emission limits, standards and work practice requirements and exclude monitoring, recordkeeping and reporting. The compliance certification would then address only ''permit terms and conditions,'' and that monitoring, recordkeeping, and reporting requirements would be handled in semiannual monitoring reports. This commenter asked that the discussion of the compliance certification obligations in the final rule should be revised accordingly.

III. Description of the Final Rule

A. How Is EPA Responding to Comments on the Proposal?

Consistent with the March 1, 2001, proposal, today's final rule requires responsible officials to identify in the certification whether compliance with each permit term and condition that is the basis of the certification was continuous or intermittent, during the period covered by the ongoing

certification. The final rule differs from its March 1, 2001, proposal in that responsible officials are no longer required to certify whether the methods used for determining compliance provide continuous or intermittent data. Although the requirement to identify whether the methods used provide continuous or intermittent data was derived for the 1997 amendments to parts 70 and 71, we kept this requirement and the corresponding preamble explanation, in the March 1, 2001, proposal because we sought to address the direction of the Court in a manner that we believed was both simple and direct and we did not believe at that time that this requirement would impose additional burden on sources; therefore, we simply added, to the language already in the rule, regulatory language directing responsible officials to identify, in the certification, whether compliance was continuous or intermittent. In concurring with comments stating that the Court disagreed with us that the requirement to identify whether the methods provide continuous or intermittent data derives from a correct interpretation of the Statutory provision and that this requirement adds unnecessary burden upon sources, we removed the requirement in the final rule.

The Agency is withdrawing section III. B. of the March 1, 2001, proposal's preamble, which would have explained what must be included in the compliance certification, to address comments that the section's depiction of how the certification must be completed is confusing and that this explanation is also ambiguous because it references an invalidated discussion from the preamble of another rule (*see* section II. B. for comments). In addition, we provide the following clarification in regard to the comment on the discussion of the elements of the certification. While agreeing that periodic reporting of monitoring deviations is covered under a separate requirement, the Agency disagrees that compliance with permit terms and conditions that are the basis of the certification can be addressed separately from monitoring deviations or that identifying permit deviations in the compliance certification duplicates other reporting. See § 70.6(c)(5)(iii). In regard to the permit terms and conditions that constitute the ''basis of the certification,'' we agree that these are the substantive regulatory requirements of the Act (such as standards, emission limits or work practices) referred to in Section 114 (a)(3) as ''applicable requirements.'' This conclusion, however, does not in any way alter the sources' compliance certification obligations. First, § 70.6(c)(5)(iii) clearly requires that permit terms that are the basis of the certification as well as permit terms that are the methods be identified in the certification. Second, in order to establish whether the compliance status was continuous or intermittent, for any permit term that is the basis of the certification, responsible officials must first determine whether there were instances of deviations for each of the corresponding monitoring, recordkeeping and reporting permit terms, during periods when compliance was required.

Finally, we agree that our explanation of a certification of ''continuous'' or ''intermittent'' compliance contained in the preamble to the March 1, 2001, is unclear since core portions of the explanation adopted by reference are invalidated by the Court's decision. Following is our explanation of when a source may certify ''continuous'' or ''intermittent'' compliance, according to the final rule, which includes background information. Sections 504(c) and 114(a)(3) of the Act require that each permit contain conditions establishing compliance certification requirements with permit terms and conditions including a requirement for responsible officials to identify the status of compliance and whether compliance, for the covered period, is continuous or intermittent. Additionally, section 504(f) provides that compliance with the permit may be deemed compliance with the underlying applicable requirements. Within this statutory scheme we believe that the determination of the compliance status made by the responsible official, for the purpose of the compliance certification, is simply an evaluation of whether or not the source is, at the time of the certification, and was, during the covered period, in compliance with those permit terms and conditions that establish practically enforceable obligations on the part of the source. Absent evidence to the contrary, the responsible official for a source that is in compliance according to the monitoring results in the permit may certify ''continuous'' compliance, provided that the responsible official did not fail to monitor, or report, or collect the minimum data required by the permit; if there were any deviations, these should have been excused by the permit. If any possible exceptions to compliance occurred, the permit would have provided for additional action that shows the underlying requirement was not violated. Any failure to meet the permit terms or conditions during a period when the permit required compliance would mean that compliance was not continuous, and the responsible official must identify the permit deviation (or possible exception to compliance in the context of part 64) in the certification and certify that compliance for the permit term or condition (that is the basis of the certification) was intermittent. If the source's circumstances are such that the status of compliance with a particular term or condition is undetermined at the time the compliance certification is submitted (such as when the source is awaiting for test results), the responsible official may indicate so in the certification together with the reason, and the date when the source was last found in continuous compliance with the permit term. A responsible official is always free to include any written explanation and other material information that helps clarify the responsible official's conclusion regarding the compliance status.

Responsible officials that used any monitoring method not specified in the permit (regardless of whether the monitoring was performed voluntarily, to comply with a State only requirement, or to track compliance with an applicable requirement that is not yet addressed by the permit), would need to identify the method(s), and take the monitoring results into account when determining the compliance status of the term or condition that is the basis of the certification (applicable requirement).

The final rule takes effect today, June 27, 2003. State permitting authorities who did not revise their operating program rules to conform to the 1997 part 70 revisions, need to take no action, to the extent their rules are consistent with this final rule. Except as described in the following paragraph, other permitting authorities must revise their programs by June 28, 2004 to add a requirement for compliance certifications to identify whether compliance with each permit term and condition that is the basis of the certification was continuous or intermittent during the covered period. The Administrator specifies a deadline of 12 months for submittal of program revisions in light of the narrow scope of the revision required of State programs. Authority for this deadline is provided in 40 CFR 70.4(i)(1), which specifies that the deadline for submittal of revisions to State part 70 programs following revision of relevant Federal regulations is 180 days or ''such other period as the Administrator may

specify, following notification* * *'' Today's action is the notification that triggers the 12-month deadline.

If a State can demonstrate that additional legal authority is needed, the deadline for submittal of a revised program to add a requirement for compliance certifications to identify whether compliance with each permit term and condition during the covered period was continuous or intermittent is June 27, 2005. Authority for this deadline is the same provision in 40 CFR 70.4(i)(1) described in the preceding paragraph for the 12-month deadline.

We believe that this final rule amending the 1997 revisions to part 70 and part 71 rules adequately address the Court's direction expressed in the remand.

B. What Are the Regulatory Revisions to the Proposal?

In response to the comments, we have deleted the second clause after the comma in the first sentence from §§ 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B). This removes the requirement that the responsible official for the affected facility identify in the annual (or more frequent) compliance certification whether the methods provide continuous or intermittent data. The current language in paragraph (5)(iii)(B) for both sections states: ''The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and weather such methods or other means provide continuous or intermittent data.'' The revised text for both sections reads: ''The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period.'' Other text within §§ 70.6(c)(5)(iii)(B), 71.6(c)(5)(iii)(B), 70.6(c)(5)(iii)(C), and 71.6(c)(5)(iii)(C) remains as proposed in March 2001. The language in this final rule requires responsible officials to identify in the compliance certification whether compliance during the covered period was continuous or intermittent, but responsible officials do not need to state whether the methods used for determining compliance provide continuous or intermittent data. We believe these revisions respond directly and adequately to the Court's decision to remand the compliance certification requirements to us and are consistent with the requirements of the Act.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether this final rule is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''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 or adversely affect 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.

Because the annualized cost of this final rule amendment would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order, we have determined that this final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This amendment does not include or create any information collection activities subject to the Paperwork Reduction Act, and therefore we will submit no information collection request (ICR) to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

C. Regulatory Flexibility Act Compliance as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an Agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment requirements 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 today's rule on small entities, small entity is defined as (1) a small business that meets the Small Business Administration size standards for small businesses found in 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. We determined and hereby certify that these revisions to parts 70 and 71 will not have a significant economic impact on a substantial number of small entities. The 1992 part 70 and the 1996 part 71 rules imposed the requirement to submit periodic compliance certification reports identifying the compliance status with permit terms and conditions, including a statement of whether compliance was continuous or intermittent. The 1997 part 70 and 71 revisions interpreted that the requirement to address, in the certification, whether the status of compliance was continuous or intermittent could be met implicitly. Although this interpretation did not change the substance of the requirement, it would have adjusted the existing way to comply with the requirement. However, in NRDC the court held that the compliance certification must address explicitly whether compliance was continuous or intermittent. The amendments to parts 70 and 71 in this final rule merely revert the implementation of this requirement according to EPA's original position under the 1992 part 70 and the 1996 part 71 rules; therefore, today's amendments add no burden on responsible officials for any small entities.

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, we 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 we promulgate a rule for which a written statement is needed, section 205 of the UMRA requires us 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 when they are inconsistent with applicable law. Moreover, section 205 allows us 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 of why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. That 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this amendment is of very narrow scope, and provides a compliance alternative very similar to one already required under the promulgated part 70 and 71 compliance certification regulations. We have determined that this final rule contains no new regulatory requirements that might significantly or uniquely affect small governments. We have also determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us 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.''

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. This final rule will not 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, as specified in Executive Order 13132. This action would not alter the overall relationship or distribution of powers between governments for the part 70 program. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Tribal Governments

This final rule does 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 by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Accordingly, this rule is not subject to Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health 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 the EPA determines is (1) ''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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risk, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule amending the State and Federal operating permit programs is not subject to Executive Order 13045 because it is not ''economically significant'' under Executive Order 12866 and it does not establish an environmental standard intended to mitigate health and safety risks.

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

This proposed rule 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 simply clarifies the implementation of an existing requirement and does not impose any new requirements that may affect the supply distribution or use of energy.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, Public Law 104–113 (March 7, 1996), we are required to use voluntary consensus standards in its regulatory and procurement 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, business practices, etc.) which are adopted by voluntary consensus standard bodies. Where we do not use available and potentially applicable voluntary consensus standards, the NTTA requires us to provide Congress, through OMB, an explanation of the reasons for not using such standards. This final rule does not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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

Congress and to the Comptroller General of the United States. We will submit a report containing this rule 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 rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Judicial Review

Section 307(b)(1) of the Act indicates which Federal Courts of Appeals have venue for petitions for review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) When the agency action consists of ''national applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This final rule revises part 70 and 71 operating permits programs regulations that are nationally applicable for purposes of section 307(b)(1). Thus, any petitions for review of this interim final rule must be filed in the D.C. Circuit within 60 days from June 27, 2003.

List of Subjects in 40 CFR Parts 70 and 71

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 20, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, we amend title 40, chapter I, parts 70 and 71 of the Code of Federal Regulations to read as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Section 70.6 is amended by revising paragraphs (c)(5)(iii)(B) and (c)(5)(iii)(C) to read as follows:

§ 70.6 Permit content

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and

* * * * *

PART 71—FEDERAL OPERATING PERMITS PROGRAMS

■ 3. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 4. Section 71.6 is amended by revising paragraphs (c)(5)(iii)(B) and (c)(5)(iii)(C) to read as follows:

§ 71.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification; and

* * * * *

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