

2001 (66 FR 52538). Adverse comments were received and EPA withdrew that approval. A final rulemaking action was published in the **Federal Register** on December 4, 2001 (66 FR 62954) which summarized the adverse comments, provided EPA's responses, and promulgated final full approval of the District of Columbia's operating permit program. Subsequently, in reevaluating the commenter's concerns, EPA agreed that the commenter had identified a deficiency in the District of Columbia's title V operating permit program relating to the District of Columbia's public notification requirements. The EPA published a notice of deficiency (NOD) in the **Federal Register** (pursuant to 40 CFR 70.4(i) and 70.10(b)) on December 21, 2001 (66 FR 65947) to notify the District of Columbia and the public that EPA found a deficiency in the District of Columbia's title V operating permit program. The deficiency relates to the District of Columbia's regulatory authority to provide public notification of permit actions.

II. Description of Action

The EPA's regulations at 40 CFR 70.7(h) and 70.7(d)(3)(i) provide that public notice shall be provided for all permit proceedings, except those qualifying as administrative permit amendments or minor permit modifications. Such public notification shall be provided by a number of means, including "by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public." See, 40 CFR 70.7(h)(1). EPA's regulations at 40 CFR 70.4(b)(16) require that State part 70 program submittals contain provisions requiring the permitting authority to implement the requirements of 40 CFR 70.7. The District of Columbia's operating permit program regulations at 20 DCMR 303.10 required that public notice of draft initial permits, significant modifications and permit renewals be published in the District of Columbia Register and that copies of such notice be sent to persons on a permit mailing list. However, the regulations did not expressly require that "other means" be employed if necessary to assure adequate public notice. Because the District of Columbia's operating permit program regulations did not require the District to provide public notice by other means if necessary to assure adequate notice to

the affected public, the District of Columbia's operating permit program did not fully comply with the requirements of the Clean Air Act and 40 CFR part 70.

Title V provides for the approval of State programs for the issuance of operating permits that incorporate the applicable requirements of the Clean Air Act. To receive title V program approval, a State permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements for proper public participation procedures (40 CFR 70.7(h)).

The EPA's title V implementing regulations at 40 CFR 70.4 and 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. A list of potential bases for program withdrawal is provided at 40 CFR 70.10(c)(1)(i), and includes the case where the permitting authority's legal authority does not meet the requirements of 40 CFR part 70.

III. Final Action

On April 4, 2003, the District of Columbia submitted revisions to 20 DCMR 303.10(a)(1)(B) which require that a notice be published in the District of Columbia Register and using any "other means" necessary to assure adequate notice to the affected public of the application, the preliminary determination, the location of the public file and the procedures for submitting written comments and requesting a hearing. With this amendment to 20 DCMR 303.10(a)(1)(B), the District of Columbia has adequately resolved the deficiency EPA identified in its December 21, 2001 notice of deficiency and maintains final full approval of the Clean Air Act title V operating permits program.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the operating permit program revisions if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on June 2, 2003 without further notice unless EPA receives adverse comments

by May 16, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the