

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.

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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